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NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**PREPARED FOR DISASTER? IMPROVING THE
DEPARTMENT OF DEFENSE'S
IMMEDIATE RESPONSE AUTHORITY**

by

Eric L. Leshinsky

December 2006

Thesis Advisor:
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**PREPARED FOR DISASTER? IMPROVING THE DEPARTMENT OF
DEFENSE'S IMMEDIATE RESPONSE AUTHORITY**

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Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(HOMELAND SECURITY AND DEFENSE)**

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ABSTRACT

Recent domestic emergencies such as the terrorist attacks of September 11, 2001 and the destruction of New Orleans by Hurricane Katrina in 2005 proved to many Americans that disaster preparedness, response and recovery are vital to America's national security. These tragic events raised doubts about the federal government's preparedness and competence to rapidly respond to crises, and increased political and public pressure to improve federal response capabilities, including the possibility of widening the U.S. military's role in homeland security and disaster response. However, before widening its role, the U.S. military must take on the initiative to evaluate and improve upon the military's current roles and mechanisms for providing effective and timely domestic incident management. Closer evaluation of the existing provisions and procedures for providing domestic military assistance is critical to this initiative and is desperately needed.

This thesis examines one of the DoD's current provisions for providing immediate disaster response and assistance—the DoD's Immediate Response Authority (IRA). This thesis evaluates the IRA provision's role and capability to provide disaster assistance when first responders are wiped out or otherwise incapable of providing effective initial disaster response. Most would agree a “smarter” DoD role is more valuable than a larger one. This thesis explores various means to make the IRA provision “smarter” to help maximize resources and improve immediate military disaster response and assistance. This thesis also strives to determine where the DoD's IRA provision fits in relation to other federal and military response mechanisms and established national strategy and policy. The research identifies current barriers to the IRA provision's effectiveness, such as strategic guidance, oversight, and training, and also provides recommendations to help eliminate these barriers to eventually improve the overall effectiveness of this valuable resource for city, state, and federal first responders.

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I. INTRODUCTION

Hurricane Katrina was the most destructive natural disaster in U.S. history. However, there is no question that the Nation's current incident management plans and procedures fell short of what was needed and that improved operational plans could have better mitigated the Hurricane's tragic events.

-- Hurricane Katrina: Lessons Learned¹

Is America prepared for disaster? Recent domestic emergencies such as the terrorist attacks of September 11, 2001 and the destruction of New Orleans by Hurricane Katrina in 2005 significantly raised American concerns over the federal government's preparedness and/or competence to rapidly respond to crises. These heightened concerns increased both political and public pressure to improve federal response capabilities, to include potentially widening the U.S. military's role in homeland security and disaster response. Many now agree a closer evaluation of the existing procedures for providing domestic military assistance, including the Department of Defense's (DoD) role when first responders are wiped out or otherwise incapable of providing initial response, is desperately needed.² The traditional assumption that the DoD will be a resource of last resort during domestic crisis may require re-examination or clarification. However, it is more prudent to have a "smarter" DoD role than a larger one.³ Therefore, it is important to determine how the U.S. military can improve its current preparedness and response mechanisms to domestic emergencies before exploring expanded roles and missions.

The DoD currently provides resources to mitigate the effects of domestic disasters, both natural and man-made, through one of its primary homeland security missions—Defense Support to Civil Authorities (DSCA).⁴ The DoD has often been

¹ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, (Washington D.C., The White House, February 2006), 19.

² House of Representatives, *A Failure of Initiative*, Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, (Washington D.C., U.S. House of Representatives, 15 February 2006), 15.

³ Discussion of a "smarter" versus "larger" DoD role in domestic incidents was raised by the Select Bipartisan Committee investigating the preparation for and response to Hurricane Katrina. See: House of Representatives, *A Failure of Initiative*, 15.

⁴ The White House, *The National Strategy for Homeland Security*, (Washington, D.C., Office of Homeland Security, The White House, July 2002), 13.

called upon to provide vital DSCA assistance to local, state, and federal first responders. Historical events of military aid and assistance include the 1906 San Francisco earthquake, the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, and more recently following the aftermath of Hurricane Katrina in 2005. The long-standing reliance of civilian agencies upon DoD resources and personnel is well-founded in a review of historic domestic disasters and until greater civilian capabilities are developed to respond to domestic disasters, the expectation that the DoD will provide substantial, if not massive, assistance will continue.⁵

To facilitate DSCA, the DoD has developed and provided various forms of guidance, organizational constructs, and provisions for domestic operations. However, the failures associated with the response to Hurricane Katrina have raised new concerns over the U.S. military's preparedness to effectively mitigate the effects of disasters through DSCA planning and response. The Department of Defense (DoD) has been urged to expand domestic planning with the Department of Homeland Security (DHS) to delineate when the U.S. military may lead the federal response and to work together with state officials to improve the integration of military response capabilities.⁶ The DoD has also been encouraged to revise its primary provision for providing immediate DSCA - Immediate Response Authority or IRA. The White House report on the lessons learned during Hurricane Katrina argues that military commanders "in appropriate circumstances" ought not necessarily need to receive requests from local authorities before proceeding with their response, so that they might provide a more flexible and rapid military response to disasters.⁷

While the role and capabilities of the U.S. military in traditional combat operations is fairly well defined, the U.S. military's direct and immediate civil support role and missions authorized under the DoD's Immediate Response Authority (IRA) provision has not been thoroughly assessed or recently evaluated. Since the U.S.

⁵ For further discussion related to the continued reliance upon the DoD for massive assistance see: Steve Bowman, Lawrence Kapp, and Amy Belasco, *Hurricane Katrina: DoD Disaster Response*, (Congressional Research Service, Library of Congress, 19 September 2005) and "Military May Do More Domestic Disaster Work," *Washington Post*, 19 September 2005.

⁶ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 94.

⁷ Ibid.

military's current role in homeland security and disaster preparedness is significantly guided and impacted by the federal government's strategic objectives, guidance, and policies, this thesis first reviews and evaluates the federal government's overall role in domestic emergencies in Chapter 2. Building on this foundation, Chapter 3 reviews the U.S. military's role, responsibilities, and guidance for domestic civil-support operations. Chapter 4 specifically focuses on the DoD's IRA provision to evaluate the impact of these foundations and to determine the various issues impacting this current DSCA activity. The research focused on determining the overall effectiveness of the DoD's IRA provision based on several core elements of successful military programs, to include:

- Comprehensive Guidance
- Effective Oversight
- Comprehensive Organizational Design and Training
- Comprehensive Strategic and Operational Planning
- Supported by and Compliance with National/Military Policy and Strategy
- Efficient Use of Resources
- Effective Understanding and Communication between Key Participants

Analysis of these core elements helped determine the overall strengths and weaknesses of the current IRA provision. Operational guidance and historical use of the IRA provision was also reviewed and evaluated. Based on the current limitations and barriers identified in Chapter 4, recommendations are provided in Chapter 5 which may help reduce or eliminate these barriers to eventually improve the overall effectiveness of this valuable local resource for city, state, and federal first responders. The long-term goal of this thesis is to clarify the DoD's homeland security roles and missions. These efforts will hopefully ensure a more effective and timely federal response to domestic emergencies by improving upon a provision in effect prior to the advent of the current debate on homeland security and defense.

A. KEY TERMS AND ISSUES

One critical problem facing all levels of government in the area of emergency preparedness and response is jurisdiction: The constant struggle to establish and define the roles of federal, state, and local governments and other entities. Compounding this problem is the general lack of understanding or agreement on several critical terms and

issues. What is Homeland Security? What is Homeland Defense? How does Homeland Security differ from Homeland Defense? Who are considered first responders during domestic disasters? What are the primary mechanisms for obtaining immediate federal assistance? Can the DoD be the lead federal agency during immediate disaster response? Clarifying these key terms and issues are critical to improving national preparedness and understanding many of the issues this paper attempts to address and clarify. Therefore, a small number of the more important terms and issues will be defined and highlighted from the start.

What is Homeland Security and Defense and how do they differ?

Homeland Security is defined as “a concerted national effort to prevent terrorist attacks within the United States, to reduce the vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”⁸ Homeland Security is a far-reaching security concept and involves initiatives and activities by various federal, state, local, and non-government organizations and all levels of government. Homeland Defense on the other hand is considered primarily a military-centric activity. Homeland Defense is currently defined as “the protection of U.S. sovereignty, territory, domestic populations, and critical defense infrastructure against external threats and aggression, or other threats as directed by the President”⁹

The fundamental difference between homeland defense and homeland security centers on responsibility. The Department of Homeland Security (DHS) is considered the lead federal agency for domestic incident management (and homeland security) in the U.S., while the Department of Defense considers homeland defense its primary responsibility.¹⁰ However, drawing a clear distinction between DHS and DoD roles and missions during some domestic events (such as a terrorist attack or catastrophic natural disaster) is more difficult. Ongoing debates over appropriate roles and missions in

⁸ The White House, *The National Strategy for Homeland Security*, 2.

⁹ Definition obtained from the Office of the Assistant Secretary of Defense for Homeland Defense, available at: http://www.dod.mil/policy/sections/policy_offices/hd/faqs/homelandDefense/index.html#q1, accessed 7 September 2006.

¹⁰ Department of Defense, *Strategy for Homeland Defense and Civil Support*, (Washington, D.C., Department of Defense, June 2005), 5.

providing homeland security have continued to call on the federal government to pursue clearer delineations between DHS and DoD responsibilities.¹¹ Over time, clarifying roles and missions will certainly help improve federal planning and coordination efforts. However, since both homeland security and defense are focused on the protection and safety of the U.S. and its citizens, these terms and security efforts should be considered more for their shared and concerted responsibilities than for their differences.

Who are considered first responders during domestic disasters?

According to the National Strategy for Homeland Security, “America’s first line of defense in the aftermath of any terrorist attack (or disaster) is its first responder community.”¹² Local and state entities typically considered the first responder community typically includes the following:¹³

- Police Officers
- Firefighters
- Emergency Medical Providers
- Public Works Personnel
- Emergency Management Officials
- National Guard Personnel (under the authority of a state governor)

Traditionally, local and state governments have maintained the primary responsibility for funding, preparing, and operating emergency services to include the first responders to a domestic disaster or terrorist attack.¹⁴ However, in the aftermath of 9/11, the U.S. government was forced to recognize that many seams existed within the national emergency response system’s plans, capabilities, and readiness.¹⁵ Numerous localities simply had little or no capabilities to respond to a terrorist attack using weapons

¹¹ For further discussion related to the DoD’s roles and missions in Homeland Security and Civil Support see: Department of Defense, *DoD Roles and Missions in Homeland Security*, (Washington D.C., Defense Science Board 2003 Summer Study Report, Department of Defense, May 2004), and Thomas Bruneau and Scott Tollefson, *Who Guards the Guardians and How*, (University of Texas Press, 2006), Chapter 5.

¹² The White House, *The National Strategy for Homeland Security*, 41.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid., 42.

of mass destruction, and even the best prepared states and localities did not possess the resources necessary to respond to the full spectrum of today's terrorist threat.¹⁶ Therefore, the federal government determined the need to create a fully integrated national response system that was adaptable to deal with any terrorist attack as well as all manner of natural disaster.¹⁷ As a result, the U.S. government directed an initiative to ensure federal, state, and local governments worked together to "ensure that all response personnel—including law enforcement, military, and environmental communities—were properly equipped, trained, and exercised to respond to all terrorist threats and attacks in the United States."¹⁸ While this initiative brought substantial improvements, to include the development of a national response plan and incident management system, federal first responders (whether DHS, DoD, or other federal agencies) are still primarily considered an augmenting resource to state and local first responders. The events of Hurricane Katrina clearly demonstrated the need for increased efforts toward the initiative to improve and clarify the roles, capabilities, and planning of local, state, and federal first responders.

What are the primary mechanisms for obtaining immediate federal assistance?

Though not adequately addressed or apparent to various levels of government and within first responder communities, there currently exist two primary mechanisms for obtaining immediate federal assistance during domestic disasters. These two mechanisms are 1) the processes outlined by DHS in the National Response Plan (NRP) and 2) the ability to request immediate assistance from military units/agencies under the DoD's Immediate Response Authority provision.

1) DHS and the National Response Plan (NRP): As the lead federal agency for domestic incident management and response, the DHS was charged with consolidating existing federal emergency response plans and to simplify the process by which governors, mayors, and county leaders' interact with the federal government.¹⁹ Based on

¹⁶ The White House, *The National Strategy for Homeland Security*, 42.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid., 13.

this mandate, the DHS developed and released the NRP in January, 2005.²⁰ The NRP was intended to apply to all incidents requiring a coordinated federal response to include the anticipation of or in response to threats or acts of terrorism, major disasters, and other emergencies.²¹ According to the NRP, state governors may request assistance through a presidentially declared disaster or emergency when state resources and capabilities have become overwhelmed.²²

Although the NRP generally seeks to preserve the primary role of state and local bodies as first responders, it does recognize that some events will be so extreme or catastrophic that a greater proactive federal government response may be necessary.²³ Based on this recognized need, the NRP included a Catastrophic Incident Annex to establish the “context and overarching strategy for implementing and coordinating an accelerated, proactive national response to a catastrophic incident.”²⁴ According to the Annex, the guiding principles for a proactive federal response include the following:²⁵

- Primary mission is to save lives, protect property and critical infrastructure, contain the event, and protect national security
- Standard procedures outlined in the NRP regarding requests for assistance may be expedited, or under extreme circumstances, temporarily suspended in the immediate aftermath of an incident of catastrophic magnitude, pursuant to existing law
- Pre-identified federal response resources are mobilized and deployed, and if required, begin emergency operations to commence life-safety activities
- Notification and full coordination with states occur, but the coordination process should not delay or impede the rapid mobilization and deployment of critical federal resources

While the NRP provides this catastrophic incident provision to facilitate a more proactive federal assistance and response, the planning and preparedness for such

²⁰ Keith Bea, *The National Preparedness System: Issues in the 109th Congress*, (Washington D.C., Congressional Research Service, Library of Congress, 10 March 2005), 23.

²¹ Department of Homeland Security, *National Response Plan*, (Washington D.C., Department of Homeland Security, December 2004), 3.

²² *Ibid.*, 8.

²³ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 14.

²⁴ *Ibid.*, 18.

²⁵ Department of Homeland Security, *National Response Plan, Catastrophic Incident Annex*, 4.

activities among various federal agencies does not appear to be very robust and no final plan has been put into place to make this (Annex) operational.²⁶ Consequently, the actual employment of (federal) resources *still* depends to a *large* degree on requests from local or state authorities and their joint participation in delivering aid to those in need.²⁷

2) DoD and the Immediate Response Authority (IRA) provision: Although only briefly addressed in the NRP, another mechanism for obtaining immediate federal assistance is through the DoD's IRA.²⁸ Under the IRA provision, local military commanders (and responsible officials of other DoD components) are authorized to take "necessary action" to respond to requests from civil authorities. Military commanders may provide immediate resources and assistance to civil authorities without prior approval or prior declaration under the NRP when a civil emergency or attack overwhelms the capabilities of local authorities. According to the defense directive 3025.1, these actions are authorized when imminently serious conditions necessitate immediate action "to save lives, prevent human suffering, or mitigate great property damage."²⁹

Under their immediate response authority, DoD assistance may meet the following types of need:³⁰

- Rescue, evacuation, and emergency medical treatment of casualties, maintenance or restoration of emergency medical capabilities, and safeguarding the public health.
- Emergency restoration of essential public services (including fire-fighting, water, communications, transportation, power, and fuel).
- Emergency clearance of debris, rubble, and explosive ordnance from public facilities and other areas to permit rescue or movement of people and restoration of essential services.
- Recover, identification, registration, and disposal of the dead

²⁶ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 15.

²⁷ Ibid., 18.

²⁸ The NRP sites the Immediate Response Authority on pages 41-43 and in the Nuclear/Radiological Incident Annex, 21.

²⁹ "Military Support to Civil Authorities," DoD Directive 3025.1, 15 January 1993, para 4.5.1, 7.

³⁰ Ibid., para 4.5.4, 8.

- Monitoring and decontaminating radiological, chemical, and biological effects; controlling contaminated areas; and reporting through national warning and hazard control systems
- Roadway movement control and planning
- Safeguarding, collecting, and distributing food, essential supplies, and materiel on the basis of critical priorities
- Damage assessment
- Interim emergency communications
- Facilitating the reestablishment of civil government functions

To initiate assistance under the IRA provision, civil authorities are requested to provide a formal request (written or verbal) “to the nearest DoD Component or military commander.”³¹ Unlike the NRP, which stipulates requests for federal assistance must originate from a state governor, under the IRA provision, DoD officials may initiate assistance under appropriate IRA conditions (to save lives, prevent human suffering, or mitigate great property damage) when requested by a non-military federal, state, or local government agency.³² In the aftermath of the 1995 Oklahoma City bombing, commanders at nearby Fort Still and Tinker Air Force Base utilized the IRA provision to provide immediate military response and support to civil authorities.³³

The DoD’s IRA provision provides a valuable resource and mechanism for obtaining immediate federal assistance when circumstances dictate. As such, understanding and clarifying this provision (to include its application within the national preparedness system and the NRP) to all levels of government should be a national priority.

Can the DoD become the lead federal agency during immediate disaster response?

Yes. Although in most cases, the DoD only provides support and assistance in response to requests from a lead or primary federal agency, the DoD’s IRA provision clearly authorizes and establishes circumstances in which U.S. military personnel could

³¹“Military Assistance to Civil Authorities,” DoD Directive 3025.15, para 4.8.3, 8.

³² Ibid., para E2.1.1 provides the definition of Civil Authorities, 16.

³³ Jim Winthrop, “The Oklahoma City Bombing: Immediate Response Authority and other Military Assistance to Civil Authority (MSCA),” *The Army Lawyer*, (July 1997), 3 and 5.

potentially be the first and only federal responders to an incident. Therefore, in such cases, the responding DoD contingent would essentially be the lead federal agency and would only transition to the DoD's traditional supporting role, if and when, FEMA or another primary federal agency were activated and in place.

The DHS and DoD have recently been urged to work together to revise the NRP to better delineate circumstances, objectives, and limitations of DoD temporary lead for federal responses to domestic catastrophic incidents.³⁴ Clarifying and improving the DoD's IRA provision will be a major part of this initiative.

B. RESEARCH METHODOLOGY AND SOURCES

The intent of this research is not to determine how the U.S. military's role in domestic homeland security and disaster response can be expanded, but to evaluate and determine how current provisions for providing immediate military assistance in the aftermath of domestic disasters could be improved. Consequently, the research focused on DoD's Immediate Response Authority (IRA) provision and the effectiveness of its current strategy, oversight, and training. The research also sought out recommendations to improve or better employ the IRA provision. The primary research questions presented were:

- How effective is strategic guidance, oversight, and training for the DoD's IRA provision?
- Are there ambiguities, gaps, and/or overlaps between the DoD's IRA and local/state/DHS roles and missions?
- What is the operational effect of these ambiguities and overlaps?
- How can the DoD improve the IRA provision?
- What steps are needed to clarify these domestic roles and missions?
- Do the current Homeland Security and Homeland Defense definitions set a clear expectation of priorities for these domestic roles and missions?
- What are the legal (and other barriers) to IRA effectiveness?
- How can those barriers be overcome and/or mitigated?
- How do domestic incidents, such as 9/11 and Hurricane Katrina, help provide illustration of the expectations and issues regarding the DoD's IRA and other federal (DHS) roles and missions?

³⁴ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 94.

A preliminary literature review revealed that limited analysis and information has been written to address the issues raised by this thesis. Consequently, information from various primary sources was utilized to assess the overall effectiveness of the DoD's current Immediate Response Authority provision. To do this, an extensive literature review was conducted to assess homeland security and emergency preparedness trends and issues that frame the debate about improving federal responses to domestic emergencies. Second, current national strategy, doctrine, and policy were evaluated to identify strategic-level guidance that directly impacts national security and federal emergency preparedness and response. Third, the U.S. military's role in domestic disaster preparedness and response was reviewed to include current military strategy, guidance, and oversight for DSCA operations. Finally, the military oversight, guidance, planning, and training components of the DoD's Immediate Response Authority provision were reviewed in-depth to help determine the overall preparedness and effectiveness of this provision. This effort involved identifying potential strategic, operational, and tactical barriers that may be limiting the provision's current overall effectiveness. Ultimately, this thesis provides recommendations for the U.S. Government, DHS, and the DoD which may help strengthen the DoD's Immediate Response Authority provision, reduce the barriers to its effectiveness, and eventually improve the federal response to domestic disasters.

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II. FEDERAL ASSISTANCE DURING DOMESTIC DISASTERS

A. OVERVIEW

Over the past 200 years, the federal government's role in domestic disaster preparedness and response has evolved significantly, and with it the mechanisms by which it provides assistance.³⁵ Early federal interventions and assistance, delivered in an ad hoc manner, would later evolve and become more formalized through federal emergency management legislation, initiatives, and organizational constructs. However, throughout this evolution, the federal government's role in disaster response has remained limited by design and hampered by persistent problems related to activating and coordinating timely federal response activities.

Limiting the federal government's role in disaster response reflects the American tradition of federalism. According to the National Strategy for Homeland Security, American democracy is deeply rooted in the precepts of federalism—a system of government in which state governments share power with federal institutions. Accordingly, local and state governments have the primary responsibility for funding, preparing, and operating the emergency services that respond to a wide range of catastrophes, including terrorist attacks. Local units are, typically, the first to respond and the last to leave the scene. Since most disasters are considered local events, disaster response in America has traditionally been handled by state and local governments, with the federal government playing a supporting role.³⁶

The precepts of federalism not only reflects in the national strategy, but also in the framework of the National Response Plan (NRP) which was established to provide a single, comprehensive approach to incident management to help prevent, prepare for, respond to, and recover from domestic attacks, disasters, and other emergencies.³⁷ According to the NRP, the basic premise of the plan is that incidents are generally

³⁵ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 11.

³⁶ Ibid.

³⁷ Department of Homeland Security, *Quick Reference Guide for the National Response Plan*, (Washington D.C., Department of Homeland Security, 22 May 2006), 1.

handled at the lowest jurisdictional level possible. In the vast majority of incidents, state and local resources and interstate mutual aid agreements provide the first line of emergency response and incident management support. When state resources and capabilities are overwhelmed, Governors may request federal assistance.³⁸ This stair-stepped approach to obtaining federal assistance has generated concern in recent years over the timing and effectiveness of federal aid. The events of 9/11 and Hurricane Katrina, four years later, have brought into question the precepts of federalism and have issued in new debate over the federal government's appropriate role in providing homeland security, including domestic emergency preparedness and response.

Today's national preparedness system encompasses overlapping federal, state, and local governances and more than 87,000 different jurisdictions.³⁹ According to the National Strategy for Homeland Security, this dynamic provides unique opportunities and challenges for America's homeland security efforts. "The opportunity comes from the expertise and commitment of local agencies and organizations involved in homeland security. The challenge is to develop interconnected and complementary systems that are reinforcing rather than duplicative and that ensure essential requirements are met."⁴⁰ A holistic approach is needed to maximize the federal government's preparedness. Federal, state, and local authorities will need to evaluate their interconnected preparedness efforts and build upon existing structures to improve disaster response and relief mechanisms. Ultimately, the federal government's role in disaster response may require refinement, beyond the confines of federalism, to ensure effective federal preparedness and responses to domestic disasters.

B. HISTORICAL PERSPECTIVE

The U.S. government has provided support and assistance to local and state governments following natural disasters since the early days of the republic. In 1803, in what is widely considered as the first federal intervention in a disaster scenario, the U.S. Congress approved the use of federal resources to assist the recovery of Portsmouth, New

³⁸ Department of Homeland Security, *Quick Reference Guide for the National Response Plan*, 3.

³⁹ The White House, *National Strategy for Homeland Security*. vii.

⁴⁰ Ibid.

Hampshire, after a devastating urban fire.⁴¹ Over the next 120 years (1830-1950), the federal government intervened in over 100 incidents (earthquakes, fires, floods, and tornados) making federal resources and assistance available to the affected areas.⁴² These incidents of federal assistance and support were however, limited in scope and delivered in an ad hoc manner without a clearly established federal role or coordinated response methodology.⁴³ Congress would simply charge a federal department and agency with the resources and personnel most pertinent to the given emergency (most often the armed forces or federal financing entities) to provide the required assistance.⁴⁴ However, over time, the speed in which federal assistance was rendered and/or available became central to the efforts to improve and streamline federal policies and the agencies involved in providing disaster aid. This growing need for effective and timely federal assistance eventually drove the federal government to evolve. The federal government's role became more formalized when the Disaster Relief Act of 1950 established the first comprehensive federal disaster relief law.⁴⁵ Over the next 56 years, numerous executive orders, legislation, and agencies (such as the Federal Emergency Management Agency, 1978) were established to help improve and streamline federal assistance prior to, during, and after natural and man-made domestic disasters. The major developments in emergency management and homeland security from 1947 to 2006 are provided in *Figure 1* and depict many significant organizational and legislative changes.⁴⁶

⁴¹ National Academy of Public Administration, *Coping With Catastrophe: Building Management: Principles and Practice for Local Government* (Washington, D.C.: National Academy of Public Administration, 1993), 10, in The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 11.

⁴² The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 11.

⁴³ Ibid.

⁴⁴ Henry Hogue and Keith Bea, *Federal Emergency Management and Homeland Security Organization: Historical Developments and Legislative Options*, (Washington D.C., Congressional Research Service, Library of Congress, 1 August 2006), 5.

⁴⁵ Ibid.

⁴⁶ Ibid., Appendix, 39-43.

Year	Authority	Organizational Development
1947	National Security Act of 1947 (61 Stat. 499).	National Security Resources Board (NSRB) is established.
1949	Reorganization Plan No. 4 of 1949.	NSRB is transferred to the Executive Office of the President (EOP).
1950	Defense Production Act of 1950 (64 Stat. 798), followed by E.O. 10193 (<i>Federal Register</i> , vol. 15, Dec. 19, 1950, p. 9031).	The Office of Defense Mobilization (ODM) is established in the EOP.
1950-1951	Disaster Relief Act of 1950 (64 Stat. 1109), followed by E.O. 10221 (<i>Federal Register</i> , vol. 16, Mar. 6, 1951, p. 2051).	The act is the first comprehensive federal disaster relief law, and it delegates certain emergency management authorities to the President. These authorities are delegated to the Housing and Home Finance Administrator.
1950	E.O. 10186 (<i>Federal Register</i> , vol. 15, Dec. 5, 1950, p. 8557).	The Federal Civil Defense Administration (FCDA) is established in the Office of Emergency Management (OEM), a decade-old organization in the in the EOP. FCDA takes on some civil defense activities previously performed by the National Security Resources Board.
1951	Civil Defense Act of 1950 (64 Stat. 1245).	FCDA is moved out of the EOP and established as an independent agency. The Civil Defense Advisory Council is established.
1952	E.O. 10346 (<i>Federal Register</i> , vol. 17, Apr. 19, 1952, p. 3477).	FCDA is given a key role in assisting federal agencies with planning for service provision and continued functioning during emergencies.
1953	E.O. 10427 (<i>Federal Register</i> , vol. 18, Jan. 20, 1953, p. 407).	Emergency management authorities previously delegated to the Housing and Home Finance Administrator are redelegated to FCDA. FCDA is given additional responsibilities related to assisting federal, state, and local agencies with developing plans for disasters.
1953	Reorganization Plan No. 3 of 1953.	New ODM is established with the functions of the old ODM as well as those of NSRB, which is abolished.
1955	E.O. 10638 (<i>Federal Register</i> , vol. 20, Oct. 13, 1955, p. 7637).	ODM is given additional responsibilities related to releasing materials from stockpiles in the event of an enemy attack.
1956	E.O. 10660 (<i>Federal Register</i> , vol. 21, Feb. 18, 1956, p. 1117).	ODM is given responsibility for the newly established National Defense Executive Reserve.
1958	Reorganization Plan No. 1 of 1958.	All emergency management authorities of ODM and FCDA are transferred to the President, and these two organizations and CDAC are consolidated into the Office of Defense and Civilian Mobilization (ODCM) in the EOP.
1958	E.O. 10773 (<i>Federal Register</i> , vol. 23, July 3, 1958, p. 5061).	The authorities transferred to the President by Reorganization Plan No. 1 of 1958 are redelegated to ODCM. The Defense and Civilian Mobilization Board, comprising the ODCM Director and heads of federal departments and agencies, is established.
1958	72 Stat. 861; E.O. 10782 (<i>Federal Register</i> , vol. 23, Sept. 10, 1958, p. 6971).	Congress renames ODCM the Office of Civil and Defense Mobilization (OCDM), and the President issues an executive order amending previous orders to reflect this change.
1961	E.O. 10952 (<i>Federal Register</i> , vol. 26, July 22, 1961, p. 6577).	Certain civil defense functions are redelegated to the Secretary of Defense. The Secretary of Defense establishes the Office of Civil Defense (OCD) to administer these functions.

1961	E.O. 10958 (<i>Federal Register</i> , vol. 26, Aug. 16, 1961, p. 7571).	Certain medical stockpile and food stockpile functions are redelegated from OCDM to the Secretary of Health, Education, and Welfare and the Secretary of Agriculture, respectively.
1961	75 Stat. 630.	Congress renames OCDM the Office of Emergency Planning (OEP).
1962	E.O. 11051 (<i>Federal Register</i> , vol. 27, Oct. 2, 1962, p. 9683).	The advisory and management functions of OEP are reaffirmed and expanded.
1964	Administrative authority.	OCD is moved from the Office of the Secretary of Defense to the Department of the Army.
1968	82 Stat. 1194.	Congress renames OEP the Office of Emergency Preparedness.
1969	Disaster Relief Act of 1969 (83 Stat. 125).	The federal government's disaster relief responsibilities are expanded.
1969	E.O. 11495 (<i>Federal Register</i> , vol. 34, Nov. 20, 1969, p. 18447).	The administration of many provisions of the Disaster Relief Act of 1969 is delegated to OEP.
1972	Administrative authority.	OCD, then located in the Department of the Army, is abolished. In its place, the Defense Civil Preparedness Agency (DCPA) is established within the Office of the Secretary of Defense.
1973	Reorganization Plan No. 1 of 1973.	Among other provisions, the plan abolishes OEP, and nearly all functions previously vested in that office or its director are transferred to the President. The plan also abolishes the Civil Defense Advisory Council, which had been established in 1950.
1973	E.O. 11725 (<i>Federal Register</i> , vol. 38, June 29, 1973, p. 17175).	The functions transferred to the President by Reorganization Plan No. 1 of 1973 are delegated to the Department of Housing and Urban Development (HUD), the General Services Administration (GSA), and the Department of the Treasury.
1978	Reorganization Plan No. 3 of 1978.	The President proposes, and Congress agrees to, the merger of five agencies from the Departments of Defense, Commerce, and Housing and Urban Development, as well as GSA, into one new independent agency, the Federal Emergency Management Agency (FEMA).
1979	E.O. 12127 (<i>Federal Register</i> , vol. 44, Apr. 3, 1979, p. 19367).	To implement Reorganization Plan No. 3 of 1978, certain functions are transferred to FEMA from the Department of Commerce (fire prevention and control; certain Emergency Broadcast System functions); the Department of Housing and Urban Development (flood insurance); and the President (other Emergency Broadcast System functions).
1979	E.O. 12148 (<i>Federal Register</i> , vol. 44, July 24, 1979, p. 43239).	To implement Reorganization Plan No. 3 of 1978, additional functions from the Departments of Defense (civil defense) and Housing and Urban Development (federal disaster assistance), GSA (federal preparedness), and the Office of Science and Technology Policy (earthquake hazards reduction) are transferred to FEMA. FEMA is also authorized to coordinate "all civil defense and civil emergency planning, management, mitigation, and assistance functions," in addition to dam safety, "natural and nuclear disaster warning systems," and "the coordination of preparedness and planning to reduce the consequences of major terrorist incidents." The Federal Emergency Management Council, composed of FEMA and Office of Management and Budget Directors, and others as assigned by the President, is established.
1993	Authority of the FEMA Director	The National Preparedness Directorate, the entity concerned with national security emergencies, is eliminated.
1996	Authority of the President to establish Cabinet membership.	The President extends Cabinet membership to the FEMA Director.

2001	Authority of the President to establish Cabinet membership.	The incoming President does not extend Cabinet membership to the FEMA Director as he establishes his Administration.
2001	Authority of FEMA Director	The President asks the FEMA Director to form an Office of National Preparedness, which was to “coordinate all Federal programs dealing with weapons of mass destruction consequence management.” [Joe M. Allbaugh, Memorandum to All FEMA Employees, “Functional Realignment,” June 5, 2001, Attachment C, p. 1.]
2002	The Homeland Security Act of 2002 (P.L. 107296, 116 Stat. 2135).	The Department of Homeland Security (DHS) is established. The functions, personnel, resources, and authorities of six existing entities, the largest of which is FEMA, are transferred into the Emergency Preparedness and Response Directorate. Section 507 of the act specifically charges FEMA with “carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program.”
2003	Department of Homeland Security Reorganization Plan.	The Homeland Security Act of 2002 is implemented, and FEMA functions are transferred to DHS on Mar. 1, 2003.
2004	Authority of the Secretary of Homeland Security under Section 872 of the Homeland Security Act of 2002.	Within DHS, organizational units are consolidated, and functions are reallocated. Among other changes, “select grant award functions ... exercised by the Under Secretary for Emergency Preparedness and Response,” under Sections 502 and 503 of the Homeland Security Act, are consolidated within the Office of State and Local Government Coordination and Preparedness, an office that is to report directly to the Secretary.
2005	Authority of the Secretary of Homeland Security under Section 872 of the Homeland Security Act of 2002.	Most preparedness functions housed in the EPR Directorate are transferred to a newly created Preparedness Directorate. FEMA becomes a freestanding unit, headed by a director, within DHS. The FEMA Director reports directly to the Secretary of Homeland Security and directly oversees three divisions (Response, Mitigation, and Recovery) and numerous offices.
2006	Authority of the Secretary of Homeland Security under Section 872 of the Homeland Security Act of 2002.	The position of Under Secretary for Emergency Preparedness and Response is renamed Under Secretary for Federal Emergency Management. The FEMA Director is placed in this position.

Figure 1. Major Emergency Management/Homeland Security Developments (From: *Federal Emergency Management and Homeland Security Organization: Historical Developments and Legislative Options*, Congressional Research Service, 1 August 2006, Appendix, 39-43)

The centerpiece legislation for providing federal aid in disaster relief today is the Robert T. Stafford Disaster Relief and Emergency Act (Stafford Act).⁴⁷ The Stafford Act amended and expanded the federal government’s disaster relief provisions originally contained in the Disaster Relief Act of 1950. Congress established the Stafford Act to provide assistance “state and local governments in carrying out their responsibilities to

⁴⁷ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 12.

help alleviate the suffering and damage which result from disasters.⁴⁸ The Act established a process for states to request a presidential disaster declaration in order to obtain federal assistance in responding to and recovering from events that exceed local and state capabilities and resources.⁴⁹ However, the Act clearly respected the states' primary role in determining when it was overwhelmed and what federal assistance was needed. The Act also required the governor of a state to request the President to declare a major disaster or emergency for a portion or all of a state. Such requests would need to describe how the states' resources were overwhelmed.⁵⁰ Once a governor's request for assistance was received, the President could declare the incident a major disaster or emergency to initiate federal assistance reducing the time to initiate a federal response to a minimum.

Following the terrorist attacks of 9/11, the federal government went through one of the most sweeping reorganizations to help improve national security. Much of the reorganization was focused on improving the nation's ability to respond to domestic emergencies and disasters. In the National Strategy for Homeland Security issued in July 2002, President Bush called for a major initiative to create a fully integrated national emergency response system adaptable enough to deal with any terrorist attack, no matter how unlikely or catastrophic, as well as all manner of natural disasters.⁵¹ This initiative, proposed by the President, would be led by the soon-to-be created Department of Homeland Security (DHS). According to the strategy, DHS would be charged with consolidating federal response plans, building a national system for incident management, and ensuring leaders at all levels of government have complete incident awareness and can communicate with and command all appropriate response personnel.⁵²

⁴⁸ U.S. Senate, *Hurricane Katrina: A Nation Still Unprepared*, Committee Report, (Washington D.C., Committee on Homeland Security and Governmental Affairs, U.S. Senate, May 2006), Chapter 13, 3.

⁴⁹ Government Accountability Office (GAO), *Emergency Preparedness and Response*, (Washington D.C., U.S. Government Accounting Office, 23 February 2006), 8.

⁵⁰ U.S. Senate, *Hurricane Katrina: A Nation Still Unprepared*, Chapter 13, 4.

⁵¹ The White House, *The National Strategy for Homeland Security*, National Vision, 42.

⁵² Ibid.

The Homeland Security Act of 2002 officially established DHS and charged the new cabinet agency to lead the federal effort to prevent terrorist attacks within the United States; reduce the vulnerability of the United States to terrorism, natural disasters, and other emergencies; and minimize the damage and assist in the recovery from terrorist attacks and other disasters.⁵³ Over the next three years, DHS undertook three major policy initiatives to help improve emergency preparedness and response. “These initiatives included the development of the (1) National Response Plan (which helps clarify roles and responsibilities of various federal agencies); (2) National Incident Management System (NIMS), a command and management process to be used with the National Response Plan during an emergency (how to do what needs to be done); and (3) National Preparedness Goal (NPG), which identifies critical tasks and capabilities (how well it should be done).”⁵⁴

Implemented by the federal government in December 2004, the NRP was to provide an all-hazards plan established a single, comprehensive framework for managing domestic incidents across all levels of government and across a spectrum of activities that includes prevention, preparedness, response, and recovery.⁵⁵ According to the NRP, the scope of the plan covers the full range of complex and constantly changing requirements in anticipation of or in response to threats or acts of terrorism, major disasters, and other emergencies.⁵⁶

The first large-scale operational test of the newly adopted NRP came in late August of 2005, when Hurricane Katrina (a Category 5 hurricane) made landfall on the Gulf Coast of the United States just east of New Orleans, Louisiana. The results were not good. Katrina raised a number of questions about the federal government’s ability to respond effectively to catastrophic events—even one with several days warning.⁵⁷ The basic assumption of the federal government being a supplement to state and local first

⁵³ Department of Homeland Security, *National Response Plan*, 9.

⁵⁴ GAO, *Emergency Preparedness and Response*, 7.

⁵⁵ Department of Homeland Security, *National Response Plan*, 2.

⁵⁶ *Ibid.*, 3.

⁵⁷ GAO, *Emergency Preparedness and Response*, 15.

responders was challenged by Katrina, which (1) “destroyed key communications infrastructure; (2) overwhelmed state and local response capacity, in many cases crippling their ability to perform their anticipated roles as initial on-site responders; and (3) destroyed the homes and affected the families of first responders, reducing their capacity to respond.”⁵⁸

Today, the need to clarify roles and responsibilities among local, state, federal first responders and improve intergovernmental coordination is vital to homeland security. Due to the continuing threats of catastrophic terrorism and natural disasters, the federal government must improve upon the foundations of disaster relief and prepare for the larger role it may be called upon to play in response to a catastrophic event.⁵⁹ To improve and possibly expand the federal government’s role in disaster relief will require a review of national-level goals and objectives which impact the national preparedness system and the current mechanisms in which federal agencies prepare, coordinate, and respond to domestic disasters.

C. NATIONAL GOALS, OBJECTIVES, AND INITIATIVES

The U.S. government’s primary goals and objectives to prevent and mitigate the affects of domestic disasters are outlined in the National Strategy for Homeland Security. According to the strategy, the strategic objectives of homeland security (in order of priority) are to:⁶⁰

- 1) Prevent terrorist attacks within the United States
- 2) Reduce America’s vulnerability to terrorism
- 3) Minimize the damage and recover from attacks that do occur.

The third objective (to minimize damage and recover from attacks), according to the strategy, is achieved by the critical mission area of emergency preparedness and response.⁶¹ Effective responses to any emergency or disaster hinges on the preparedness of the various first responders and agencies that plan, train, and equip them. As such, the strategy’s national vision for emergency preparedness states that “our federal, state, and

⁵⁸ GAO, *Emergency Preparedness and Response*, 8.

⁵⁹ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 12.

⁶⁰ The White House, *The National Strategy for Homeland Security*, vii.

⁶¹ *Ibid.*, viii.

local governments” will “ensure that all response personnel and organizations—including law enforcement, military, emergency response, health care, public works, and environmental communities—are properly equipped, trained, and exercised to respond to all terrorist threats and attacks in the United States.”⁶² To adapt a metaphor, preparedness is the horse and response is the cart. With that methodology in mind, the national strategy stresses the importance of preparedness and the need to create an effective national emergency response system. “We need a comprehensive national system to bring together and command all necessary assets quickly and efficiently. We must equip, train, and exercise many different response units to mobilize for any emergency without warning.”⁶³ To get to that point, the National Strategy for Homeland Security identified twelve major initiatives in the area of emergency preparedness and response:⁶⁴

- 1) Integrate separate federal response plans into a single all-discipline incident management plan
- 2) Create a national incident management system
- 3) Improve tactical counterterrorist capabilities
- 4) Enable seamless communication among all responders
- 5) Prepare health care providers for catastrophic terrorism
- 6) Augment America’s pharmaceutical and vaccine stockpiles
- 7) Prepare for chemical, biological, radiological, and nuclear decontamination
- 8) Plan for military support to civil authorities
- 9) Build the Citizen Corps
- 10) Implement the First Responder Initiative of the Fiscal Year 2003 Budget
- 11) Build a national training and evaluation system
- 12) Enhance the victim support system

In order to establish expectations and set deadlines for implementation of these national preparedness and response initiatives, the President issued several important Homeland Security Presidential Directives. Homeland Security Presidential Directive 5

⁶² The White House, *The National Strategy for Homeland Security*, 42.

⁶³ *Ibid.*, 41.

⁶⁴ *Ibid.*, x.

required the adoption of the National Incident Management System or NIMS (which establishes a core set of concepts, principles, terminology, and organizational processes for emergency event management) by all federal departments and agencies; and that federal preparedness grants would be dependent upon NIMS compliance by the recipients.⁶⁵ The overlying premise being if state and local first responders implement NIMS in their response activities, the common terminology and knowledge of incident management would foster a more swift and effective response when emergency responders from various levels of government and locations respond to incidents.⁶⁶

Homeland Security Presidential Directive 8 required DHS to coordinate the development of a national domestic all-hazards preparedness goal “to establish measurable readiness priorities and targets that appropriately balance the potential threat and magnitude of terrorist attacks and large-scale natural or accidental disasters with the resources required to prevent, respond to, and recover from them.”⁶⁷ The national preparedness goal was also to include readiness metrics and standards for preparedness assessments and strategies and a system for assessing the nation’s overall preparedness to respond to major events.⁶⁸ To implement this directive, DHS developed 15 emergency event scenarios from which it established 37 target capabilities (as of December 2005) that federal, state, and local first responders should focus, develop, and maintain.⁶⁹ Of these 37 target capabilities, 26 directly relate to emergency preparedness and response operations (*Figure 2*). However, as of February 2006, DHS was still in the process of developing goals, requirements, and metrics for these capabilities. Furthermore, in light of the events of Hurricane Katrina, DHS is reassessing both the NRP and the National Preparedness Goal initiative.⁷⁰ This reassessment should involve critical analysis of the U.S. military’s role in homeland security and the DoD’s Immediate Response Authority.

⁶⁵ GAO, *Emergency Preparedness and Response*, 9.

⁶⁶ *Ibid.*, 9.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, 10.

⁷⁰ *Ibid.*

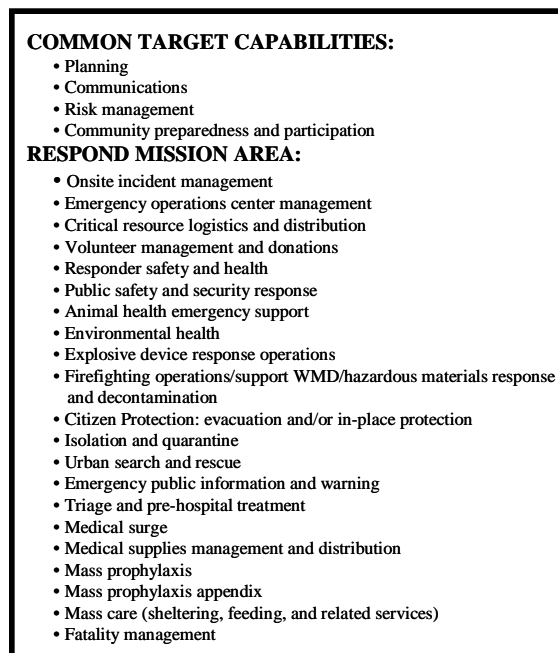


Figure 2. Target Capabilities Related to Emergency Preparedness and Response (After: *Emergency Preparedness and Response*, GAO Report, 23 Feb 06, 18)

D. PERSISTENT PROBLEMS WITH FEDERAL PREPAREDNESS AND RESPONSE

1. Ensuring Effective and Timely Federal Response

Ensuring an effective and timely federal response to domestic disasters has been a persistent problem. In 1992, the federal government's response and management of catastrophic disasters was intensely criticized after Hurricane Andrew leveled much of South Florida and Hurricane Iniki destroyed much of the Hawaiian island of Kauai. Prior to these storms, other major disasters, such as the 1989 Loma Prieta earthquake in California generated similar criticism of the federal response effort.⁷¹ During these incidents, the federal government's strategy for responding to domestic disasters was considered deficient primarily because it lacked provisions for the

⁷¹ GAO, *Disaster Management; Improving the Nation's Response to Catastrophic Disasters*, (Washington D.C., U.S. Government Accounting Office, July 1993), 1.

federal government to immediately assess the damage and needs of disaster victims (to include food, shelter, and other essential services) when local and state resources were overwhelmed.⁷²

Following the terrorist attacks of 9/11, the federal government took on an initiative to better clarify roles and responsibilities of federal agencies during catastrophic disasters through the NRP. However, the timing of a federal response is still somewhat constricted by the NRP's foundational rule-of-thumb that "incidents are typically managed at the lowest possible geographic, organizational, and jurisdictional level" and the federal government is primarily a supplemental resource, as needed or required.⁷³

In order to clarify the methods and processes for obtaining immediate federal assistance, the DHS provided an appendix in the NRP which provides an overview of the federal government's involvement under Stafford Act and non-Stafford Act situations. As illustrated in the NRP, *Figure 3* depicts the "likely" federal actions under the Stafford Act and *Figure 4* depicts the "likely" federal-to-federal agency support actions under non-Stafford Act situations in responding to domestic incidents.

Although these processes are clearly illustrated, the underlying preparedness and methods for requesting and obtaining timely federal assistance during actual incidents are not. One of the primary shortfalls with federal assistance has centered on the timing in which federal aid actually arrived at the disaster. The response to Hurricane Andrew suffered from miscommunication and confusion of roles and responsibilities at all levels of government slowing the delivery of services vital to disaster victims.⁷⁴ The federal response to Hurricane Katrina, guided by the newly established NRP, suffered a similar fate.

⁷² GAO, *Disaster Management; Improving the Nation's Response to Catastrophic Disasters*, 1.

⁷³ GAO, *Emergency Preparedness and Response*, 8.

⁷⁴ GAO, *Disaster Management; Improving the Nation's Response to Catastrophic Disasters*, 5.

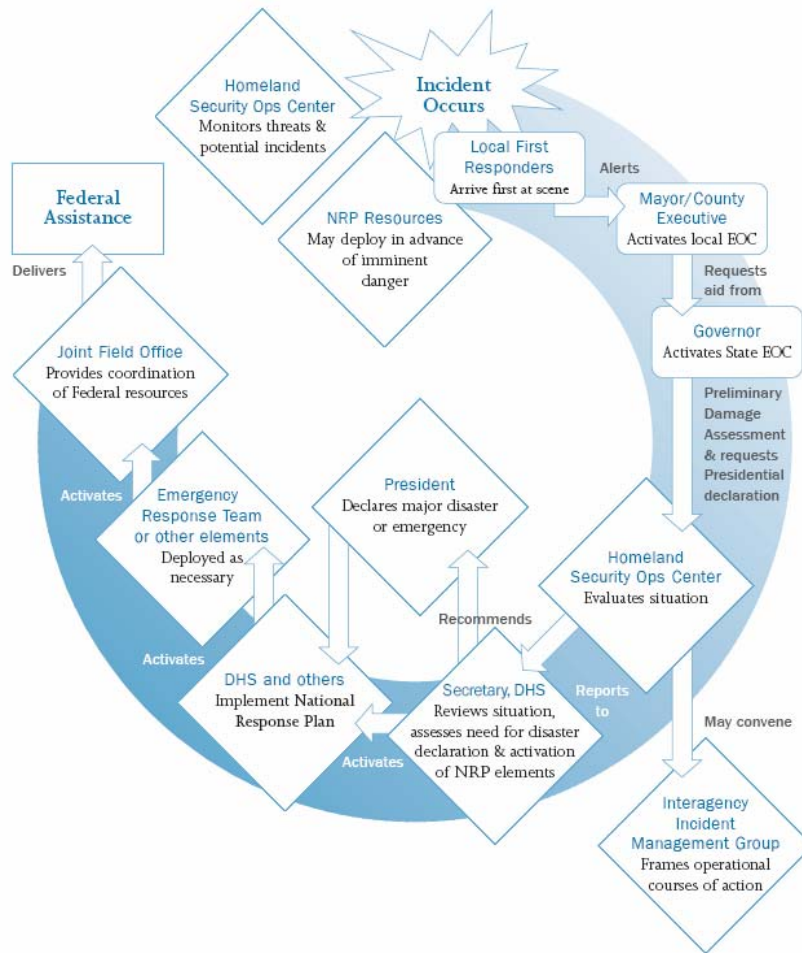


Figure 3. Overview of Initial Federal Involvement under the Stafford Act (From: National Response Plan, 93)

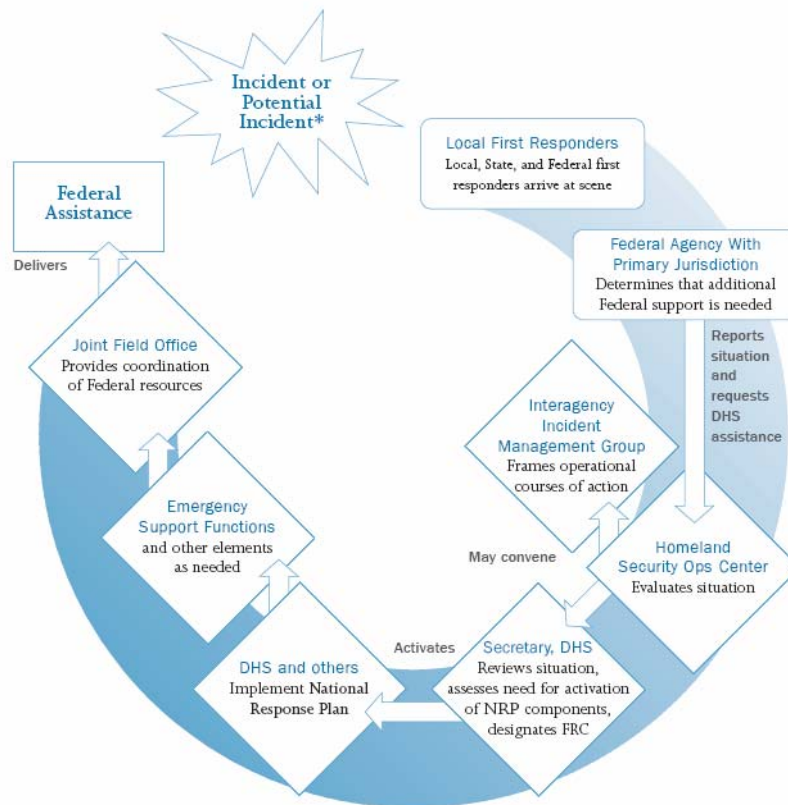


Figure 4. Overview of Federal-to-Federal Support in Non-Safford Act Situations (From: National Response Plan, 95)

During Hurricane Katrina, first responders were largely overwhelmed and unable to perform their duties. The NRP also did not adequately provide a way for federal assets to quickly supplement or supplant (if necessary) local first responders.”⁷⁵ The NRP’s mechanism for providing accelerated federal support, the Catastrophic Incident Annex, was not implemented. According to the Select Bipartisan Committee’s report on Hurricane Katrina, the Secretary of DHS “should have invoked the Catastrophic Incident Annex” in order to switch the federal response posture from a “reactive” to a “proactive mode of operations.”⁷⁶ According to the report, by failing to initiate the Catastrophic Incident Annex, federal response officials in the field were forced to make decisions to bypass established procedures and provide assistance without waiting for “appropriate

⁷⁵ House of Representatives, *A Failure of Initiative*, 1.

⁷⁶ *Ibid.*, 3.

requests from the states or clear orders from Washington.”⁷⁷ Most of these decisions were made by individual federal officials, over several days, and in an uncoordinated fashion as circumstances required. However, some point out that even if the Catastrophic Incident Annex had been initiated during Katrina, the actual employment of federal resources still depended to a large degree on individual requests from local or state officials and their joint participation in delivering aid to those in need.⁷⁸

The federal government eventually stumbled into a proactive response and recover mode during Hurricane Katrina, but only after several critical days had passed since landfall.⁷⁹ As a result of the delayed federal response during Katrina, the federal government is again being urged to not rely on the traditional layered approach and instead be better prepared to proactively provide (or ‘push’) its capabilities and assistance directly to those in need.⁸⁰ The ability to push federal assistance is a responsibility that must be more explicitly acknowledged, planned, and coordinated for in the NRP, and the federal government must aggressively resource, train, and equip first responders to meet this critical national security obligation.⁸¹

2. Ensuring Effective Intergovernmental Coordination and Operability

Ensuring effective federal interagency coordination and operability during domestic disasters has also been a persistent problem over the years. After the terrorist attacks of 9/11, the U.S. government recognized a vital need for cooperation between federal, state, and local governments on a scale never before seen in the United States.⁸² According to the National Strategy for Homeland Security, cooperation must occur both horizontally (within each level of government) and vertically (among various levels of government). As such, the federal government took on various initiatives to alter and improve the way the federal government and the nation coordinates and responds to

⁷⁷ House of Representatives, *A Failure of Initiative*, 132.

⁷⁸ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 18.

⁷⁹ Ibid.

⁸⁰ Ibid., 19.

⁸¹ Ibid.

⁸² The White House, *The National Strategy for Homeland Security*, 13.

emergencies. These coordination efforts helped result in the development of the NRP and the implementation of NIMS by the Department of Homeland Security.

However, the ineffective national response to Hurricane Katrina demonstrated to the nation that critical gaps in preparedness, coordination, and interoperability among responders at various levels of government persist within the national preparedness system. Many of these gaps can be contributed to a limited coordination and preparedness strategy between key federal agencies. According to the Select Bipartisan Committee Report, many federal agencies, including DHS, still have varying degrees of unfamiliarity with their roles and responsibilities under the NRP and NIMS.⁸³ The current National Strategy for Homeland Security's emphasis on interagency coordination and operability focuses primarily on improving the interaction between federal, state, and local levels (vertical coordination). Nowhere in the strategy is there a strategic objective to horizontally coordinate the efforts of the various federal agencies to ensure mutual support and initiatives to "close gaps" or leverage resources.⁸⁴ As such, horizontal coordination between federal agencies (i.e., DHS and DoD) to address gaps in disaster preparedness and response has been limited.

In the aftermath of Hurricane Katrina, several government reports have called on the federal government to address this persistent problem with intergovernmental coordination and operability. "The federal government should work with its homeland security partners in revising existing plans, ensuring a functional operational structure—including within regions—and establishing a clear, accountable process for all national preparedness efforts. In doing so, the federal government must:"⁸⁵

- Ensure that Executive Branch agencies are organized, trained, and equipped to perform their response roles
- Finalize and implement the National Preparedness Goal

The overall responsibility of homeland security is not easily divided. Consequently, "a true national preparedness system" will need to "ensure that all levels

⁸³ House of Representatives, *A Failure of Initiative*, 3.

⁸⁴ Andrew Henrikson, "An Interagency Approach to U.S. Port Security," *Strategic Insights*, (Volume IV, Issue 2, Center for Contemporary Conflict, February 2005), 4.

⁸⁵ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 88.

of government effectively work together to keep the American people safe and secure at home.”⁸⁶ Creating a truly effective homeland security preparedness and response apparatus will require a holistic approach, comprised of federal, state, and local agencies (and partnerships with non-government/private industry) to be successful when disasters strike. Clarifying and improving the U.S. military’s role in disaster preparedness and response will be an important and critical step in this process.

⁸⁶ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 19.

III. MILITARY ASSISTANCE DURING DOMESTIC DISASTERS

A. OVERVIEW

The U.S. military has always played a significant role in providing support and assistance to domestic disasters; however, in the wake of 9/11, the relative and necessary role of the U.S. military in domestic homeland security missions (to include emergency preparedness and response) has become less clarified. According to the DoD, the U.S. military currently contributes to homeland security efforts through its missions overseas, homeland defense operations, and through the support it provides to civil authorities.⁸⁷ However, the amount of homeland security roles and missions (to include DSCA) the U.S. military is prepared to take on has remained a matter of primary concern and center of debate for some time. According to a 2003 Defense Science Board report, ever since FEMA was established in 1978, the DoD has considered its domestic emergency response role to be one of providing support or assistance to non-DoD civil authorities. “Military planners assume that civil agencies will always lead domestic emergency preparedness and response efforts, with the DoD providing resources only in response to appeals from state and local governments to the President.”⁸⁸

In the aftermath of Hurricane Katrina in late 2005, the debate and uncertainty over the DoD’s necessary role in domestic emergency preparedness and response was again center-stage. The White House’s Hurricane Katrina after-actions report, titled “The Federal Response to Hurricane Katrina: Lessons Learned” called on the DoD and DHS to delineate the circumstances, objectives, and limitations of when the DoD might temporarily assume the lead during federal responses to catastrophic incidents.⁸⁹ This initiative to help improve and clarify the U.S. military’s role in federal emergency preparedness, planning, and response is well-justified and desperately needed.

⁸⁷ “Homeland Security,” Joint Publication 3-26, (Washington D.C., Joint Chiefs of Staff, 1 August 2005), I-3.

⁸⁸ Department of Defense, *DoD Roles and Missions in Homeland Security*, (Washington D.C., Defense Science Board 2003 Summer Study Report, Department of Defense, May 2004), 5.

⁸⁹ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 94.

B. HISTORICAL PERSPECTIVE

In reviewing events from past U.S. disasters, it becomes obvious that one of the primary means the U.S. government utilizes to provide quick and robust federal assistance to civil authorities is through its military. For example, following the aftermath of Hurricanes Andrew in 1992 and Katrina in 2005, the DoD deployed over 22,000 and 72,000 military personnel, respectively, to help mitigate the affects of these disastrous storms.⁹⁰ In providing federal assistance to catastrophic domestic disasters such as these, the DoD has long been considered “the only organization capable of providing, transporting, and distributing sufficient quantities of items needed” due to:⁹¹

- The DoD having, for example, trained medical and engineering personnel, mobile medical units, storehouses of food and temporary shelters, contingency planning skills, command capability, resources for mass care, and the ability to transport these resources
- Catastrophic relief activities mirror some of the DoD’s wartime support missions. Soldiers are trained for similar missions, and catastrophic disaster relief provides soldiers with additional training
- Catastrophic disaster response are smaller than many military operations and do not significantly affect DoD’s military readiness in the short term

Despite these unique capabilities to help mitigate the affects of domestic disasters, the DoD has always sought only thin military “slices” of responsibility for domestic operations and has worked hard to keep them thin. This effort to limit the scope of its role in domestic civil support operations reflects the fact that the DoD neither wants nor prepares extensively for civil-support operations on a continuing basis.⁹² This goes a long way in explaining the deep divide and levels of acceptance that currently exists between the military’s homeland defense and homeland security roles and missions. However, despite these varying levels of acceptance, the U.S. military’s homeland security and civil-support role and missions have continued to evolve. While initial military interventions and assistance were primarily overseen and governed on a case-by-

⁹⁰ Steve Bowman, *Homeland Security: Establishment and Implementation of the United States Northern Command*, (Washington D.C., Congressional Research Service, The Library of Congress, 24 January 2006), 2; and GAO, *Disaster Assistance, DoD’s Support for Hurricanes Andrew and Iniki and Typhoon Omar*, (Washington D.C., U.S. General Accounting Office, June 1993), 2.

⁹¹ GAO, *Disaster Management: Improving the Nation’s Response to Catastrophic Disasters*, 7-8.

⁹² John Gentry, “Complex Civil-Military Operations,” *NWC Review*, (autumn 2000), 5.

case basis, over time, various Executive orders, legislation, and other statutes were enacted to govern the U.S. military's involvement in domestic emergency management and response. In response to these Executive orders and statutes, the DoD developed and implemented numerous defense directives, programs, and organizations to establish a framework for providing military assistance through what is now called Defense Support to Civil Authorities (DSCA) activities.

The process of creating DoD organizations specifically focused on DSCA and other homeland security operations began in the 1950s with the establishment of the North American Aerospace Defense (NORAD) Command. However, NORAD was primarily designed and focused on protecting America from Soviet and other external threats. Following the end of the cold war, the DoD took on new initiatives to help improve and clarify military domestic support and assistance. In early 1993, the DoD issued an updated directive, DoD Directive 3025.1, *Military Support to Civil Authorities (MSCA)*, to help consolidate all policy and responsibilities applicable to disaster-related civil emergencies.⁹³ The directive assigned the Secretary of the Army as the DoD's Executive Agent for DSCA activities which permitted the Secretary to task DoD Components (Army, Navy, Air Force, and Marines) to plan for and commit resources in response to requests for military assistance.⁹⁴ To assist in these duties, the Secretary of the Army was required to establish a single headquarters element (Directorate of Military Support-DOMS) to coordinate and issue necessary deployment orders for DSCA activities.⁹⁵ The directive also called on the Commander in Chief, Forces Command (Army); the Commander in Chief, U.S. Atlantic Command; and the Commander in Chief,

U.S. Pacific Command, to lead military assistance planning activities within their geographical areas:⁹⁶

- Forces Command – 48 contiguous States and the District of Columbia
- U.S. Atlantic Command – Puerto Rico and the U.S. Virgin Islands

⁹³ "Military Support to Civil Authorities," DoD Directive 3025.1, 1.

⁹⁴ Ibid., 4.

⁹⁵ Ibid., 13.

⁹⁶ Ibid., 4-5.

- U.S. Pacific Command – Alaska, Hawaii, and U.S. possessions and territories in the Pacific area

In the late 1990s, additional DoD guidance and military organizations to guide domestic military assistance were established. In 1997, the DoD released DoD Directive 3025.15, *Military Assistance to Civil Authorities (MACA)*. This directive was designed to further establish DoD policy and responsibilities for providing domestic military assistance.⁹⁷ The directive established the following six criteria against which all requests for military assistance should be evaluated:⁹⁸

- **Legality** (compliance with laws)
- **Lethality** (potential use of lethal force by or against DoD forces)
- **Risk** (safety of DoD forces)
- **Cost** (who pays, impact on DoD budget)
- **Appropriateness** (whether the requested mission is in the interest of the Department to conduct)
- **Readiness** (impact on DoD's ability to perform its primary mission)

Increased concerns over national security and the potential for terrorist attacks prompted military reorganization in the late 1990s. On 1 October 1999, the U.S. Joint Forces Command created a new military organization, Joint Task Force-Civil Support (JTF-CS), to help provide military support to civil authorities during the aftermath of a domestic catastrophe. Headquartered at Fort Monroe, Virginia, JTF-CS was designed the primary responsibility of planning and integrating DoD support to assist lead federal agencies in responding to “a deliberate or unintentional event involving a nuclear, biological, chemical, radiological weapon or device, or large conventional explosive, that produces catastrophic loss of life or property.”⁹⁹

In 2000, the DoD also issued a directive to provide policy and guidance governing the use of Reserve component members under the Military Emergency Preparedness Liaison Officer (EPLO) Program. According to the directive, EPLO's would provide

⁹⁷ “Military Support to Civil Authorities,” DoD Directive 3025.1, 1.

⁹⁸ Ibid., 3.

⁹⁹ Major General Bruce Lawlor, “Military Support of Civil Authorities-A New Focus for a New Millennium,” *Journal of Homeland Security*, (22 March 2004), available at: www.homelandsecurity.org/newjournal/articles/lawlor.htm, accessed 9 September 2006.

support to military organizations and to civil authorities (i.e., FEMA) during military civil-support operations.¹⁰⁰ Overall EPLO policy and program oversight was assigned to the Assistant Secretary of Defense for Reserve Affairs and to each Secretary of the Military Departments for their service's assigned EPLOs.¹⁰¹

On September 11, 2001, however, most of the previous steps toward improving the military's homeland security and domestic civil-support operations would amount to mere steppingstones to the larger initiatives the DoD would need to take to ensure disaster preparedness in a new security environment faced with global terrorism. In the aftermath of 9/11, the DoD's role in disaster preparedness and response became a subject of national debate and research. Highlighted in a 2003 Defense Science Board's study on the DoD's roles and missions in homeland security, the U.S. military's "support model... described as: Call us when you need us and we'll do all we can... had two very considerable problems."¹⁰² 1) "A WMD attack may well call for the immediate deployment of equipment or capabilities that no local or state government can afford to maintain. 2) "There is a built-in response delay as federal officials respond to local and state government requests for resources: units must be identified, equipment issued, and transportation arranged."¹⁰³ As a result of these inherent problems, the panel highlighted that often times "the supported officials and the supporting commander meet for the first time at the scene of an emergency. This delay and possible confusion (at the scene) could result in additional damage, additional casualties, or the further spread of a chemical or biological agent."¹⁰⁴

Concerns and problems within the national preparedness and response apparatus, such as those identified by the Defense Science Board, prompted several federal initiatives to clarify the DoD's domestic roles and missions following 9/11. The DoD's

¹⁰⁰ "Military Emergency Preparedness Liaison Officer (EPLO) Program," DoD Directive 3025.16, (Washington D.C., Department of Defense, 18 February 1997), 3.

¹⁰¹ Ibid., 2-3.

¹⁰² Department of Defense, *DoD Roles and Missions in Homeland Security*, Part I, Emergency Response Panel, 6.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

traditional supporting role in domestic civil-support operations was addressed in a key Presidential Directive and the NRP.¹⁰⁵ Homeland Security Presidential Directive-5 (HSPD-5), released in February 2003, specified that the “DoD will provide military assistance to civil authorities for domestic incidents as directed by the President or when consistent with military readiness and appropriate under the circumstances and the law.”¹⁰⁶ The directive required the DoD to adopt the use of the National Incident Management System for disaster preparedness and response, and to also work with the DHS to establish “appropriate” relationships and mechanisms for cooperation and coordination between the two Departments.¹⁰⁷ Under the NRP, the DoD’s key supporting role during domestic disasters was address in “virtually the same language as that used in HSPD-5.”¹⁰⁸ According to the NRP, the “DoD has significant resources that may be available to support the federal response to an Incident of National Significance.”¹⁰⁹ However, the terminology “may be available” and “support,” clearly reflected the continuation of the traditional supporting role and case-by-case assistance expected from the DoD and the U.S. military during domestic incidents. In addition to establishing the DoD’s general supporting role, the NRP also identified the DoD as a supporting resource to a lead agency within the NRP’s Emergency Support Functions (ESFs), “reflecting the fact that DoD has unique resources and capabilities to provide humanitarian relief in a catastrophe.”¹¹⁰ *Figure 5* provides information on the DoD’s specifically assigned roles under the NRP’s 15 ESFs.¹¹¹

Though the DoD’s traditional supporting role in civil-support operations was left virtually unaltered, the DoD underwent massive reorganization to help improve homeland security and civil-support operations. On 30 April 2002, President Bush signed a new DoD Unified Command Plan which established a new combatant

¹⁰⁵ U.S. Senate, *Hurricane Katrina: A Nation Still Unprepared*, Chapter 26, 2.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid., 3.

¹⁰⁹ Department of Homeland Security, *National Response Plan*, 10.

¹¹⁰ U.S. Senate, *Hurricane Katrina: A Nation Still Unprepared*, Chapter 26, 3.

¹¹¹ Ibid., 4.

command, the U.S. Northern Command (USNORTHCOM), to provide command and control over the DoD's "homeland defense efforts and to coordinate military support to civil authorities."¹¹² USNORTHCOM's area of primary responsibility was defined as the "air, land, and sea approaches and encompasses the continental United States, Alaska, Mexico and the surrounding water out to approximately 500 nautical miles. It also includes the Gulf of Mexico, Puerto Rico, and the U.S. Virgin Islands."¹¹³ To help clarify USNORTHCOM's role in disaster preparedness and response, the National Strategy for Homeland Security required that the commander of USNORTHCOM update "plans to provide military support to domestic civil authorities in response to natural and man-made disasters and during national emergencies."¹¹⁴ In addition to the creation of USNORTHCOM, the signing of the 2003 National Defense Authorization Act in late 2002 established the position of the Assistant Secretary of Defense for Homeland Defense (ASD-HD). The ASD-HD's primary responsibilities are to "develop policies, conduct analyses, provide advice, and make recommendations on homeland defense, defense support to civil authorities, emergency preparedness, and domestic crisis management matters within the DoD."¹¹⁵

Despite the initiatives and reorganization to clarify the roles and responsibilities at the strategic-levels of the DoD after 9/11, one significant question was left unresolved in the area of domestic disaster preparedness and response: How can the DoD improve its current mechanisms for providing disaster preparedness and response? In the aftermath of Hurricane Katrina in late 2005, the DoD's overall approach to planning and responding to domestic emergencies resulted in criticism, debate, and some calls for transformation to improve the U.S. military's response to catastrophic incidents. President Bush introduced the prospect of expanding the military's role in internal

¹¹² Steve Bowman, *Homeland Security: Establishment and Implementation of the United States Northern Command*, (Washington D.C., Congressional Research Service, Library of Congress, 18 August 2006), 1.

¹¹³ Ibid.

¹¹⁴ The White House, *The National Strategy for Homeland Security*, 45.

¹¹⁵ Responsibilities of the ASD-HD are available at http://www.dod.mil/policy/sections/policy_offices/hd/faqs/homelandDefense/index.html#q3, accessed 15 October 2006.

missions including civil-support operations during a post-Katrina interview in which he contended that such events in the future may “require greater federal authority and a broader role for the armed forces.”¹¹⁶

Emergency Support Function	DOD's Specific Role
1. Transportation	Provides military liaison to ESF #1 desk and military transportation to move resources, and assists in contracting for civilian aircraft. ²⁴
2. Communications	Uses own resources to provide own communications and coordinates numerous other communication issues with the Federal Emergency Communications Coordinator. ²⁵
3. Public Works and Engineering	Army Corps of Engineers provides technical assistance, engineering, and construction management. ²⁶
4. Firefighting	Conducts firefighting on DOD installations and assists other lead agencies for firefighting on non-DOD land. ²⁷
5. Emergency Management Annex	No specific role identified. ²⁸
6. Mass Care, Housing, and Human Services	Army Corps of Engineers provides ice and water; inspects shelter sites for suitability; and assists in construction of temporary shelters and temporary housing repair. ²⁹
7. Resource Support	No specific role identified. ³⁰
8. Public Health and Medical Services	Transports patients to medical care facilities; assists with mortuary services; procures and transports medical supplies; and provides DOD medical supplies, blood products, medical personnel, laboratory services, and logistics support. ³¹
9. Urban Search and Rescue	When requested, serves as a primary source for rotary and fixed-wing aircraft to support urban search-and-rescue operations; and Army Corps of Engineers provides (1) certain training and structural integrity analysis, (2) assessments of whether buildings are safe to enter, (3) building stability monitoring, and (4) other services. ³²
10. Oil and Hazardous Materials Response	Provides the federal on-scene coordinator and directs response actions for releases of hazardous materials from its vessels, facilities, vehicles, munitions, and weapons; and Army Corps of Engineers provides response and recovery assistance involving radiological dispersion devices and improvised nuclear devices. ³³
11. Agriculture and Natural Resources	Assesses (1) the availability of DOD food supplies and storage facilities, (2) transportation equipment at posts near the affected area, and (3) laboratory, diagnostic, and technical assistance; and assists in animal emergency response; develops appropriate plans; and the Army Corps of Engineers provides expertise and resources to assist in removal and disposal of debris and animal carcasses. ³⁴
12. Energy	Coordinates emergency power team missions with power restoration activities and provides appropriate support. ³⁵
13. Public Safety and Security	If directed by the President, quells insurrection and provides physical and electronic security systems assistance and expertise. ³⁶
14. Long Term Community Recovery and Mitigation	Provides technical assistance in community planning, civil engineering, and natural hazard risk assessment and supports national strategy development for housing, debris removal, and restoration of public facilities and infrastructure. ³⁷
15. External Affairs	No specific role identified other than to provide support as required. ³⁸

Figure 5. DoD's Assigned Roles under the National Response Plan's ESFs. (From: *Hurricane Katrina: A Nation Still Unprepared*, Chapter 26, 4)

¹¹⁶ “Skelton: Rumsfeld Confirms DOD has no plans to Alter Posse Comitatus,” *InsideDefense.com*, (13 Oct 2005), 1. Available at www.insidedefense.com, accessed 16 November 2006.

In response to this criticism, the DoD has also deemed it reasonable to reexamine and perhaps redefine the DoD's role in response to truly catastrophic events. "It may be time to raise the bar, tighten our plans, and achieve an even higher more rapid and effective military response in some future catastrophic event. Our performance was better than our plans (during Hurricane Katrina), and it's time to close that gap" remarked Paul McHale, Assistant Secretary of Defense for Homeland Defense.¹¹⁷

C. LEGAL PERSPECTIVE

Military involvement in U.S. domestic affairs, including civil support, eventually drew criticism and debate. Most of the criticism centered on concerns and preferences to limit the federal government's central control (or federalism) and the military's domestic activities due to its perceived impact on civil liberties. As such, provisions were set in place over time to limit the scope and use of the U.S. military in domestic operations. Today, the legal basis for DSCA rests upon a wide range of provisions including constitutional and statutory authorities, as well as defense directives, regulations, and other agreements between the DoD and local, state, and federal authorities/agencies.

DSCA has remained the DoD's primary domestic mission grounded in the provisions of the US Constitution, which states that "Congress shall have power... to provide for calling forth the militia to execute laws of the union, suppress insurrection, and repel invasions."¹¹⁸ The Constitution also emphasizes the role of the national military in law enforcement operations: "The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them... against domestic violence."¹¹⁹

Various current legal statutes govern DoD participation in domestic disaster relief operations. These statutes establish pre-disaster and disaster response reimbursement procedures, authorize the use of military forces to put down insurrection, and generally prohibit the use of the military from performing law enforcement roles except in

¹¹⁷ Merrick Krause and Jeffrey Smotherman, "An Interview with Assistant Secretary of Defense for Homeland Defense: Paul McHale," *Joint Forces Quarterly Forum*, (Issue 40, 1st Qtr, 2006), 15.

¹¹⁸ Michael J. Mendenhall, "The Constitution of the United States of America: The Definitive Edition," *The Institute for Constitutional Research*, (Monterey CA, 1990), 7-8.

¹¹⁹ *Ibid.*, 17.

responses to insurrections and/or where authorized by the Constitution or acts of Congress. Applicable statutes include the following:

- *Economy Act* – This act “permits federal agencies to provide goods or services to another federal agency when such support is requested. Such assistance will not necessarily be related to disaster response.”¹²⁰
- *Stafford Act* – This act is the “primary statute governing DoD and other federal agency disaster assistance under the NRP. Stafford Act reimbursements are authorized once the Governor has asserted that state capabilities are overwhelmed and federal assistance is needed, and the President has declared an emergency.”¹²¹
- *Insurrection Act* – This act “authorizes the President to use military force to suppress an insurrection or end other domestic violence. Specifically, the President may employ military forces to restore order, prevent looting, and engage in other law-enforcement activities.”¹²²
- *Posse Comitatus Act* – This act makes it a criminal offense to use the Army or Air Force to execute law enforcement functions unless authorized by the Constitution or Congress. Congress enacted the Posse Comitatus Act to restrict the use of federal troops in conducting law enforcement in the South during the Reconstruction period.¹²³ Federal courts have generally interpreted the Act to prohibit the use of military troops from participating in law enforcement activities such as search, seizure, and arrest. The DoD has also issued policy guidance extending the act’s restrictions to the Navy and Marine Corps; however, these restrictions do not apply to the National Guard when under the direct command of a state’s Governor.¹²⁴ Furthermore, while the act’s applicability is primarily limited to law enforcement activities, some argue that the act is often cited (and sometimes misrepresented) by military leaders in order to limit the military’s domestic operations and maintain combat-readiness.¹²⁵

¹²⁰ 31 U.S.C, Section 1535, in U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared*, Chapter 26, 5.

¹²¹ 42 U.S.C, Section 5121-5206, in U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared*, Chapter 26, 5.

¹²² 10 U.S.C, Section 331-335, in U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared*, Chapter 26, 5.

¹²³ GAO, *DoD Can Combat Fraud Better by Strengthening Its Investigative Agencies*, (21 March 1983), 15, in U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared*, Chapter 26, 5.

¹²⁴ 18 U.S.C, Section 1385, in U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared*, Chapter 26, 5.

¹²⁵ Pat Towell, “Northern Command Stirs Issue of Military Role in Security,” *Congressional Quarterly--Weekly*, (2 November 2002), 2.

The U.S. Congress has also created a number of specific exceptions to the general restrictions in the Posse Comitatus Act to authorize the use of DoD personnel and equipment for certain roles and missions including:¹²⁶

- Assisting with drug interdiction and other law enforcement functions
- Protecting civil rights or property, or suppress insurrections
- Assisting the U.S. Secret Service
- Protecting nuclear materials and assist in solving crimes involving nuclear material
- Assisting with some terrorist incidents involving weapons of mass destruction
- Assisting with the execution of quarantine and certain public health events

While numerous statutes that have been established to govern the role and use of the U.S. military in domestic affairs, the legal authority for the majority of DSCA operations is the Stafford Act. However, there is one current exception outside of the Stafford Act framework which provides U.S. military commanders with the authority to respond to domestic emergencies and disaster relief operations--the DoD's Immediate Response Authority provision.¹²⁷ This authority, addressed in several DoD directives and within the NRP, allows military commanders to respond to assistance requests from civil authorities without prior approval or Presidential declaration.

Following the aftermath of 9/11, the President's National Strategy for Homeland Security called for a review of the legal authority for military assistance in domestic security operations. According to the strategy, "the threat of catastrophic terrorism requires a thorough review of the laws permitting the military to act within the United States in order to determine whether domestic preparedness and response efforts would benefit from greater involvement of military personnel and, if so, how."¹²⁸ However, it is unclear if any review has been conducted by the federal government up to this date.

¹²⁶ GAO, *Homeland Defense: DoD Needs to Assess the Structure of U.S. Forces for Domestic Military Missions*, (Washington D.C., U.S. General Accounting Office, 11 July 2003), 11.

¹²⁷ Winthrop, 4.

¹²⁸ The White House, *The National Strategy for Homeland Security*, 48.

D. MILITARY STRATEGY, GOALS, AND OBJECTIVES

Today's DSCA strategy and activities are grounded in the National Strategy for Homeland Security, which identifies three specific circumstances under which the DoD would be involved in homeland security and domestic civil-support:¹²⁹

- 1) In extraordinary circumstances, to conduct military missions such as combat air patrols or maritime defense operations
- 2) During emergencies such as responding to an attack or to forest fires, floods, tornadoes, or other catastrophes, as well as to assist during national special events. In these circumstances, the DoD may be asked to act quickly to provide capabilities that other agencies don't have.
- 3) During "limited scope" missions where other agencies have the lead (i.e., Olympics or Presidential Inaugurations)

Using the circumstances outlined in the national strategy, the DoD developed and provided the U.S. military's primary strategy, goals, and objectives for providing DSCA within the DoD's Strategy for Homeland Defense and Civil Support released in 2005. The strategy attempts to focus military activities to achieving the DoD's paramount goal—securing the United States from attack.¹³⁰ According to the strategy document, the DoD's activities to protect the United States generally fall into one of the following three categories:¹³¹

Lead: At the direction of the President or the Secretary of Defense, the Department of Defense executes military missions that dissuade, deter, and defeat attacks upon the United States, our population, and our defense critical infrastructure.

Support: At the direction of the President or the Secretary of Defense, the Department of Defense provides support to civil authorities. This support is part of a comprehensive national response to prevent and protect against terrorist incidents or recover from an attack or disaster. DoD provides support to a lead Federal agency when directed by the President or the Secretary of Defense.

Enable: The Department of Defense seeks to improve the homeland defense and homeland security contributions of our domestic and

¹²⁹ The White House, *The National Strategy for Homeland Security*, 13.

¹³⁰ Department of Defense, *Strategy for Homeland Defense and Civil Support*, 1.

¹³¹ *Ibid.*, 2.

international partners and, in turn, to improve DoD capabilities by sharing expertise and technology, as appropriate, across military and civilian boundaries.

Within this lead, support, and enable framework for providing homeland defense and civil support, the DoD has focused on five primary objectives and has identified them in order of priority. These objectives are:¹³²

Priority #1 – Achieve maximum awareness of potential threats

Priority #2 – Deter, intercept and defeat threats at a safe distance

Priority #3 – Achieve mission assurance

Priority #4 – Support civil authorities in minimizing the damage from domestic chemical, biological, radiological, nuclear, or high-yield explosive (CBRNE) mass casualty attacks

Priority #5 – Improve national and international capabilities for homeland defense and homeland security

In examining these objectives and their requisite core capabilities (*Figure 6*), it becomes clearly obvious that the first two objectives are primarily focused on the military's core homeland defense and traditional warfighting missions. These priorities focus DoD efforts to obtain timely and accurate threat awareness and to proactively use this information “to identify, track, and intercept threats long before they threaten this nation.”¹³³ The third priority, to achieve mission assurance, is also DoD-centric in that it focuses on the protection of DoD forces, defense infrastructure, and defense crisis management and continuity of operations ensuring the survivability of “DoD assets and U.S. military forces.”¹³⁴ While the fourth priority focuses on the DoD's traditional capabilities and efforts to provide DSCA, the only core capability specifically identified is the need to provide consequence management support following chemical, biological, radiological, nuclear, or high-yield explosive

¹³² Department of Defense, *Strategy for Homeland Defense and Civil Support*, 2-3.

¹³³ Ibid, 16.

¹³⁴ Ibid., 18.

ACTIVITIES	OBJECTIVES	CORE CAPABILITIES
LEAD	Achieve Maximum Awareness of Threats	<ul style="list-style-type: none"> • Maintain agile and capable defense intelligence architecture • Analyze and understand potential threats • Detect, identify, and track emerging threats in all operational domains • Ensure shared situational awareness within DoD and with domestic and foreign partners
	Deter, Intercept, and Defeat Threats at a Safe Distance	<ul style="list-style-type: none"> • Deter adversaries from attacking the US homeland • Intercept and defeat national security threats in the maritime and air approaches and within US territory
	Achieve Mission Assurance	<ul style="list-style-type: none"> • Ensure force protection, to include DoD installations, especially against the threat of CBRNE attacks • Prepare and protect defense critical infrastructure • Ensure preparedness of the Defense Industrial Base • Prepare to protect designated national critical infrastructure • Ensure DoD crisis management and continuity preparedness
SUPPORT	Support Consequence Management for CBRNE Mass Casualty Attacks	<ul style="list-style-type: none"> • Manage consequences of CBRNE mass casualty attacks
ENABLE	Improve National and International Capabilities for Homeland Defense and Homeland Security	<ul style="list-style-type: none"> • Effective interagency planning and interoperability • Improved Federal, state, and local partnership capacity and effective domestic relationships • Improved international partnership capacity and effective defense-to-defense relationships

Figure 6. DoD Objectives and Core Capabilities for Protecting the United States (From: *Strategy for Homeland Defense and Civil Support*, 15)

(CBRNE) attacks. According to the objective, “the potential for multiple, simultaneous, CBRNE attacks on U.S. territory is real. It is therefore imperative that the DoD be prepared to support civilian responders in responding to such mass casualty events.”¹³⁵ Therefore, the primary initiatives and core capabilities to improve national preparedness and incident management efforts are contained in the DoD’s last key objective—to improve national and international capabilities for homeland defense and homeland security. According to this objective, improving interagency planning and interoperability will require “active DoD participation” to “ensure that procedures for supporting civil authorities are consistent with the framework for domestic incident

¹³⁵ Department of Defense, *Strategy for Homeland Defense and Civil Support*, 19.

response” as outlined in the NRP and NIMS.¹³⁶ To improve federal, state, and local partnership capacity and effective domestic relationships, the DoD identified three tenets to improve DSCA:¹³⁷

- 1) Augment civil capabilities with DoD expertise where necessary
- 2) Ensure the seamless operational integration of defense support capabilities with those of the civil sector
- 3) Assist in the civil sector’s development and procurement of new technologies and equipment

Within these three tenets, the DoD identified three initiatives currently underway to strengthen civilian capabilities:¹³⁸

- 1) Development of CBRNE victim rescue capabilities
- 2) Research and development, and civilian acquisition of unmanned aerial vehicles for law enforcement and ground surveillance systems for border security
- 3) Development of an attack prevention and recovery plan and technical advice and analysis regarding Man-Portable Air Defense System (MANPAD) weapons

According to the DoD, these initiatives “can increase the overall effectiveness of national capabilities and potentially reduce other agencies’ dependencies on limited DoD assets.”¹³⁹ Clearly these initiatives and objectives are important. Reducing the dependency on DoD assets will help the DoD focus on what the Strategy for Homeland Defense and Civil Support places “premium” and “primary responsibility”— protecting the US homeland from attack.¹⁴⁰ However, based on this priority, the DoD admittedly “accepts some risk” in its limited efforts in achieving its “enable” objectives (including DSCA activities) to more effectively address what the DoD considers a more immediate (or military-centric) need, the “lead” and “support” objectives.¹⁴¹ The DoD must bear in mind that prevention, deterrence, and the reduction on military dependency will only be

¹³⁶ Department of Defense, *Strategy for Homeland Defense and Civil Support*, 32.

¹³⁷ *Ibid.*, 32-33.

¹³⁸ *Ibid.*, 33.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*, 39.

¹⁴¹ *Ibid.*

effective in certain scenarios and certain disasters. Domestic disasters (whether natural or man-made) will happen again; it's just a matter of where and when. Therefore, improving the current mechanisms for providing military assistance is an initiative of vital importance. Unfortunately, it is an initiative that has been left dangerously vague and with limited priority within the DoD's current primary strategy for governing military civil-support.

E. CURRENT MECHANISMS FOR OBTAINING MILITARY ASSISTANCE

According to several sources, there currently exist three primary mechanisms for obtaining military response and assistance to a domestic disaster.¹⁴² These primary mechanisms include:¹⁴³

- 1) At the direction of the President
- 2) If the Secretary of DHS declares an event an Incident of National Significance (under the NRP)
- 3) At the request of a Governor of an affected state and in support of a lead federal agency

The first mechanism recognizes the President's inherent constitutional authority to call on military forces to restore order, prevent looting, and engage in other law-enforcement activities during events of domestic insurrection.¹⁴⁴ The second and third mechanism recognizes the federal government's response authority provided under the Economy Act, the Stafford Act, and within the NRP's principles for proactive federal responses to catastrophic events. While these are the general and most commonly utilized means of obtaining military assistance, they are not only avenues for obtaining DoD support.

Though not adequately addressed or apparent to various levels of government and first responder communities, there currently exists two primary alternatives for requesting and obtaining DoD assistance during domestic disasters. The first, and most common, is

¹⁴² Bowman, *Homeland Security: Establishment and Implementation of the United States Northern Command*, 2, and also provided by the Office of the Assistant Secretary of Defense for Homeland Defense, available at: www.dod.mil/policy/sections/policy_offices/hd/faqs/homelandDefense, accessed 7 September 2006.

¹⁴³ Bowman, *Homeland Security: Establishment and Implementation of the United States Northern Command*, 2.

¹⁴⁴ 10 U.S.C, Section 331-335, in U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared*, Chapter 26, 5.

through the U.S. military's established role in providing domestic assistance through the DoD's DSCA construct. The means of requesting and activating DSCA activities generally apply to the three typical activation mechanisms mentioned above. The second and least understood resources and means of obtaining immediate DoD assistance is through the U.S. military's Immediate Response Authority. A general overview of these two important resources is provided in the following sections.

1. Defense Support to Civil Authorities (DSCA)

DSCA generally "refers to DoD support provided by federal military forces, DoD civilians and contract personnel, and DoD agencies and components, in response to requests for assistance during domestic disasters, incidents to include terrorist threats or attacks, major disasters, and other emergencies."¹⁴⁵ According to the NRP, in most instances, the DoD provides DSCA in response to requests from a lead or primary agency.¹⁴⁶ These DSCA requests are typically "made to the Office of the Secretary of Defense, Executive Secretariat" and require "approval of the Secretary of Defense in order to obligate DoD assets to provide support."¹⁴⁷ As a general rule, DSCA activities are normally only authorized and provided "when local, state, and federal resources are overwhelmed, provided that it (assistance) does not interfere with the Department's military readiness or operation."¹⁴⁸

To facilitate and guide DSCA activities, the DoD has developed and implemented numerous defense directives, programs, and organizations to establish a framework for providing military assistance. An overview of the current DSCA framework and establishment is provided below:

a. Defense Directives and Guidance

DoD directives and guidance governing DSCA activities can be found in several primary documents. These primary documents include:

- Military Strategy for Homeland Defense and Civil Support

¹⁴⁵ Department of Homeland Security, *National Response Plan*, 41.

¹⁴⁶ Ibid.

¹⁴⁷ Bowman, *Homeland Security: Establishment and Implementation of the United States Northern Command*, 2.

¹⁴⁸ Department of Homeland Security, *National Response Plan*, 42.

- Department of Defense Homeland Security Joint Operating Concept
- Joint Publication 3-26, Homeland Security
- DoD Directive 3025.1, Military Support to Civil Authorities
- DoD Directive 3025.12, Military Assistance for Civil Disturbances
- DoD Directive 3025.15, Military Assistance to Civil Authorities

b. Key DoD Positions and Organizations Responsible for DSCA

(1) Secretary of Defense (SecDef). The SecDef authorizes DSCA activities for domestic incidents as directed by the President or when consistent with military readiness operations and appropriate under the circumstances and the law. The SecDef “retains command of military forces under DSCA, as with all other situations and operations.”¹⁴⁹ Although, it is worth noting that this command authority does not currently pertain to non-federalized National Guard members participating in civil-support operations under the authority of a state governor.¹⁵⁰

(2) Assistant Secretary of Defense for Homeland Defense (ASD-HD). The ASD-HD develops “policies, conduct analyses, provide advice, and make recommendations on homeland defense, defense support to civil authorities, emergency preparedness, and domestic crisis management matters within the DoD.”¹⁵¹

(3) Chairman of the Joint Chiefs of Staff (CJCS). The CJCS is responsible for coordinating with and assisting commandant commands (two are discussed below) “with strategic direction and planning for, as well as execution of, homeland defense and civil support missions.”¹⁵² The primary DSCA guidance currently provided by the CJCS is contained within Joint Publication 3-26, *Homeland Security*.¹⁵³

(4) Joint Director of Military Support (JDOM). All requests for DSCA, “except those provided under mutual aid agreements or in response to

¹⁴⁹ Department of Homeland Security, *National Response Plan*, 10.

¹⁵⁰ Steve Bowman, Lawrence Kapp, Amy Belasco, *Hurricane Katrina: DoD Disaster Response*, (Washington D.C., Congressional Research Service, Library of Congress, 19 September 2005), 7.

¹⁵¹ Responsibilities of the ASD-HD are available at http://www.dod.mil/policy/sections/policy_offices/hd/faqs/homelandDefense/index.html#q3, accessed 15 October 2006.

¹⁵² Department of Defense, *Strategy for Homeland Defense and Civil Support*, 8.

¹⁵³ “Homeland Security,” Joint Publication 3-26.

imminently serious conditions,” are processed by the JDOM.¹⁵⁴ Located within the JCS, the JDOM receives requests for military assistance, “produces military orders as they pertain to domestic emergencies and forwards them to the SecDef for approval.”¹⁵⁵ Upon SecDef approval, the JDOM then forwards the order “to the appropriate military commander for execution.”¹⁵⁶ The JDOM may translate SecDef or ASD-HD guidance into operational orders without or without formal requests for emergency assistance.

(5) Combatant Commands (COCOM). There are two primary commandant commands responsible for overseeing the planning, organizing, and execution of DSCA operations within the United States and its territories. U.S. Northern Command (USNORTHCOM), headquartered in Colorado Springs, CO, is responsible for DSCA “within the continental United States, Alaska, and territorial waters. It also coordinates security cooperation with Canada and Mexico” and oversees operations in the “costal approaches, the Gulf of Mexico, Puerto Rico, and the U.S. Virgin Islands.”¹⁵⁷ U.S. Pacific Command (USPACOM), headquartered in Honolulu, HI, is responsible for DSCA activities within “Hawaii and US territories, possessions, and freely associated states in the Pacific.”¹⁵⁸

Once requests for DSCA assistance is approved by the SecDef, the Secretary generally “designates a supported combatant commander for the response.”¹⁵⁹ Once designated the authority to provide assistance, the “combatant commander determines the appropriate level of command and control” necessary for the particular incident. In response to most incidents of limited severity, the COCOM’s will designate “a senior military officer to deploy to the incident site” to oversee DoD activities and “serve as the single point of contact.”¹⁶⁰ When responding to significant disasters, such

¹⁵⁴ “Homeland Operations,” Air Force Doctrine Document 2-10, (Washington D.C., Department of the Air Force, 21 March 2006), 11.

¹⁵⁵ “Homeland Security,” Joint Publication 3-26, Chapter IV, 10.

¹⁵⁶ Ibid.

¹⁵⁷ Department of Defense, *Strategy for Homeland Defense and Civil Support*, 8.

¹⁵⁸ Ibid.

¹⁵⁹ Department of Homeland Security, *National Response Plan*, 42

¹⁶⁰ Ibid.

as Hurricane Katrina, “the supported combatant commander may utilize a Joint Task Force (JTF) to consolidate and manage” DSCA operations. As of August 2006, the COCOM’s have established several Joint Task Forces, comprised of over 400 military and civilian personnel, to facilitate various DSCA activities, they include:¹⁶¹

- Standing Joint Force Headquarters North (USNORTHCOM)
- Joint Task Force North (USNORTHCOM)
- Joint Task Force Civil Support (USNORTHCOM)
- Joint Force Headquarters National Capital Region (USNORTHCOM)
- Joint Task Force Homeland Defense (USPACOM)

(6) DoD Components (Army, Navy, Air Force, and Marines).

In addition to the overall responsibilities of the individual COCOMs, individual DoD components have also been mandated key responsibilities to manage and support DSCA. According to DoD directive, the Secretaries of the military departments are to “provide for participation” in DSCA activities and “ensure readiness of Active and Reserve forces to execute plans for DSCA.”¹⁶² The individual services are also directed to provide and assign Reserve personnel, “based on validated military planning and operational requirements,” to FEMA and other agencies to “provide liaison for planning” for DSCA operations.¹⁶³ To provide a framework and oversight for these Reserve liaison positions, the DoD establish policy and guidance governing the Emergency Preparedness Liaison Officer (EPLO) Program.¹⁶⁴

(7) Military Emergency Preparedness Liaison Officer (EPLO).

EPLOs serve as the primary interface between their service’s (DSCA) planning agent and their assigned command or agency (i.e., FEMA)¹⁶⁵ EPLOs are “assigned by the military services and selected DoD agencies to coordinate the use of DoD resources in support of

¹⁶¹ Bowman, *Homeland Security: Establishment and Implementation of the United States Northern Command*, 3-4, and JTF Homeland Defense available at: <http://www.usarpac.army.mil/docs/jtf-hd/jtf-hd.htm>, accessed 18 September 2006.

¹⁶² “Military Support to Civil Authorities (MSCA),” DoD Directive 3025.1, (Washington D.C., Department of Defense, 15 January 1993), 12.

¹⁶³ *Ibid.*, 13.

¹⁶⁴ “Military Emergency Preparedness Liaison Officer (EPLO) Program,” DoD Directive 3025.16, (Washington D.C., Department of Defense, 18 December 2000).

¹⁶⁵ *Ibid.*, 4.

civil authorities during Presidentially declared disasters and emergencies.”¹⁶⁶ “EPLO teams are assigned to each state (and U.S. Territory) and each FEMA region, consisting of officers and noncommissioned officers from the Army, Navy, and Air Force. Marine Corps Reserve officers are assigned to each FEMA region, but also support states within their region as needed.”¹⁶⁷ When disasters strike, EPLOs often “deploy to national or regional incident command centers, such as the Homeland Security Operations Center (within DHS), to coordinate the DoD response to the event.”¹⁶⁸ The DoD provides the following general guidelines for EPLO positions:¹⁶⁹

- EPLOs shall be highly qualified senior-level officers (O-5/O-6)
- Completion of the DoD EPLO Course conducted by FEMA¹⁷⁰
- Participation in at least one national, regional, or state emergency response training exercise (natural disaster or weapon of mass destruction) every 18 months
- Participation in an annual National Joint EPLO Conference/Workshop

Although the DoD provides these general EPLO guidelines and has delegated general DoD oversight responsibilities to the Assistant Secretary of Defense for Reserve Affairs, significant program oversight and management has been assigned to the individual military departments.¹⁷¹ Each service department, notably the Air Force, Army, and Navy, have been required to establish “a single point of contact (planning agent) responsible for managing and coordinating” EPLO activities. Each service also determines how many EPLOs will be sourced (for example, the Air Force currently maintains over 100 EPLOs and the Army maintains over 200),¹⁷² where they

¹⁶⁶ “Manual for Civil Emergencies,” DoD 3025.1-M, (Washington D.C., Department of Defense, June 1994), 39.

¹⁶⁷ Mike Sharon, “Emergency Preparedness Liaison Officers: Your Key to Military Support,” *International Association of Emergency Managers*, (Vol.22, No.7, July 2005), 3.

¹⁶⁸ U.S. Senate, *Hurricane Katrina: A Nation Still Unprepared*, Chapter 26, 2.

¹⁶⁹ “Military Emergency Preparedness Liaison Officer (EPLO) Program,” DoD Directive 3015.16.

¹⁷⁰ This course no longer exists. DoD DSCA training is now conducted on-line and via seminar by US Army North G-7, information available at: <http://www.usarnorth.org/public/index.cfm>, accessed 19 October 2006.

¹⁷¹ “Military Emergency Preparedness Liaison Officer (EPLO) Program,” DoD Directive 3025.16, 2.

¹⁷² Ralph Studdard, Acting Commander, Air Force National Security Emergency Preparedness officer, Interview by Eric Leshinsky, Telephone, 17 October 2006.

will be assigned, and also how they will be utilized and trained.¹⁷³ As such, the specific duties, day-to-day responsibilities, and roles of each EPLO during the preparation for, or response to, an actual domestic disaster will vary by assignment and military department.

(8) Defense Coordinating Officer (DCO). In addition to the coordinating resource offered by EPLOs, the DoD has also provided specialized training to various senior military officers (in the grade of O-6) to coordinate DSCA operations. When disasters strike, these officers may be activated to deploy as a DCO to the Joint Field Office or another emergency management command center to orchestrate military support. When activated, the DCO may be augmented with a military and civilian staff (known as a Defense Coordinating Element) to assist the DCO carry out their assigned duties.¹⁷⁴

2. Immediate Response Authority (IRA)

Although only briefly addressed in the NRP, another viable resource and means of obtaining immediate military assistance is through the DoD's IRA.¹⁷⁵ Under the DoD's IRA provision, local military commanders (and responsible officials of other DoD components) are authorized to take "necessary action" to respond to requests from civil authorities. Military commanders may provide immediate resources and assistance to civil authorities without prior approval or prior declaration under the NRP when a civil emergency or attack overwhelms the capabilities of local authorities. According to the defense directive, these actions are authorized when imminently serious conditions necessitate immediate action "to save lives, prevent human suffering, or mitigate great property damage."¹⁷⁶ Unlike the NRP, which stipulates requests for federal assistance must originate from a state governor, under the IRA provision, DoD officials may initiate

¹⁷³ "Military Emergency Preparedness Liaison Officer (EPLO) Program," DoD Directive 3025.16, 3.

¹⁷⁴ U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared*, Chapter 26, 2.

¹⁷⁵ The NRP sites the Immediate Response Authority on pages 41-43 and in the Nuclear/Radiological Incident Annex, 21.

¹⁷⁶ "Military Support to Civil Authorities," DoD Directive 3025.1, para 4.5.1, 7.

assistance under appropriate IRA conditions (to save lives, prevent human suffering, or mitigate great property damage) when requested to by a non-military federal, state, or local government agency.¹⁷⁷

The DoD's IRA provision provides a unique resource and mechanism for obtaining immediate federal assistance when circumstances dictate. Clearly, in the immediate aftermath of an attack or disaster, the prompt assistance provided by local military installations and agencies may be the vital and critical enabler to mitigate the disaster and its affects. As such, understanding and clarifying this provision, to include its application in the national preparedness system and NRP, should be a national priority. Further details of the IRA provision and the various barriers to its current overall effectiveness are provided in the following chapter.

F. PERSISTENT PROBLEMS AND ISSUES WITH MILITARY DOMESTIC DISASTER PREPAREDNESS AND RESPONSE

Although the U.S. military has typically received high praise for its overall support and assistance during domestic disasters, the DoD's policies and preparedness to provide timely DSCA has been subject of concern and debate. Many believe the U.S. military should be more prepared to assist local, state, and federal agencies mitigate the affects of man-made and natural disasters. In response to the criticism stemming from the DoD response to Hurricane Katrina, the DoD has deemed it reasonable to reexamine and perhaps redefine the DoD's role in response to truly catastrophic events. "It may be time to raise the bar, tighten our plans, and achieve an even higher more rapid and effective military response in some future catastrophic event. Our performance was better then our plans (during Hurricane Katrina), and its time to close that gap" remarked Paul McHale, Assistant Secretary of Defense for Homeland Security.¹⁷⁸ Closing this gap will certainly require evaluation and remedy of the persistent problems and issues facing DoD disaster preparedness and response operations.

¹⁷⁷ "Military Assistance to Civil Authorities," DoD Directive 3025.15, para E2.1.1, provides the definition for Civil Authorities, 16.

¹⁷⁸ Merrick Krause and Jeffrey Smotherman, "An Interview with Assistant Secretary of Defense for Homeland Security: Paul McHale," *Joint Forces Quarterly Forum*, Issue 40, 1st Qtr 2006. p.15.

1. Lack of Clearly Established DoD Roles and Missions

The DoD has taken significant organizational steps to help improve and streamline the management of DSCA operations. In creating ASD-HD, USNORTHCOM, and the various Joint Task Forces, the DoD has helped clarify specific responsibilities, roles, and missions for domestic preparedness and response activities. However, some would argue these efforts do not go far enough. Many believe that the national security environment changed so significantly after 9/11 to warrant the DoD taking a more active role in disaster emergency preparedness and response and that the current policies that prescribe the role of the DoD (in these responses) are simply inadequate for the threats and potential disasters the nation faces today.¹⁷⁹

Admittedly, there is a large and complex set of issues associated with any intrusion of the DoD in domestic affairs. On one hand, most citizens recognize there is a role for the military in homeland defense.¹⁸⁰ What is less clear is what role, if any, the DoD should play in preparing for and responding to major terrorist attacks.¹⁸¹ As such, the U.S. government, DHS, and DoD must continue to evaluate the U.S. military's role and missions in providing DSCA and immediate disaster response (under the DoD's Immediate Response Authority) and clarify these missions and ambiguities within the NRP, NIMS, and throughout the first responder community.

2. Lack of Clarity Regarding the Mechanism for Requesting Military Support under the Immediate Response Authority

Active-duty military personnel can only act in support of a lead federal civilian agency, in this case the Federal Emergency Management Agency, which is part of the Department of Homeland Security.

-- AFIS, 31 August 2006¹⁸²

As illustrated in the news story quoted above, there tends to be a lack of clarity and/or understanding regarding the mechanism for requesting and providing military support under the DoD's Immediate Response Authority provision. While the DoD

¹⁷⁹ Department of Defense, *DoD Roles and Missions in Homeland Security*, 6.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Jim Garamone, "DoD Response Began Before Katrina Made Landfall," *American Forces Press Service*, American Forces Information Service, available at: http://www.defenselink.mil/news/Sep2005/20050906_2628.html, accessed 31 August 2006.

clearly identifies the IRA provision in various defense directives and other documents as a formal and pre-approved exception to the standard DSCA civil-request and approval method, the process of requesting IRA assistance is still not included, identified, or footnoted in the DoD's doctrinal request for assistance diagrams (*Figure 7*).

Furthermore, the ongoing paradigm that the DoD is not, or can not, be a lead federal agency during disaster response (also depicted in *Figure 7*) potentially leads to a lack of acceptance and preparedness for this pre-approved DoD response mechanism. The DoD's IRA provision clearly authorizes and establishes circumstances in which the U.S. military could potentially be the first and only federal responders to an incident. In such cases, the responding DoD contingent would essentially be the lead federal agency and would only transition to the DoD's traditional supporting role, if and when, FEMA or another primary federal agency were activated and in place.

The DHS and DoD has recently been urged to work together to revise the NRP to better delineate circumstances, objectives, and limitations of when DoD might temporarily assume the lead for federal responses to domestic catastrophic incidents.¹⁸³ Clarifying and improving the DoD's IRA provision should be a major part of this initiative. Further discussion regarding this persistent issue and problem is provided in the forgoing chapters.

¹⁸³ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 94.

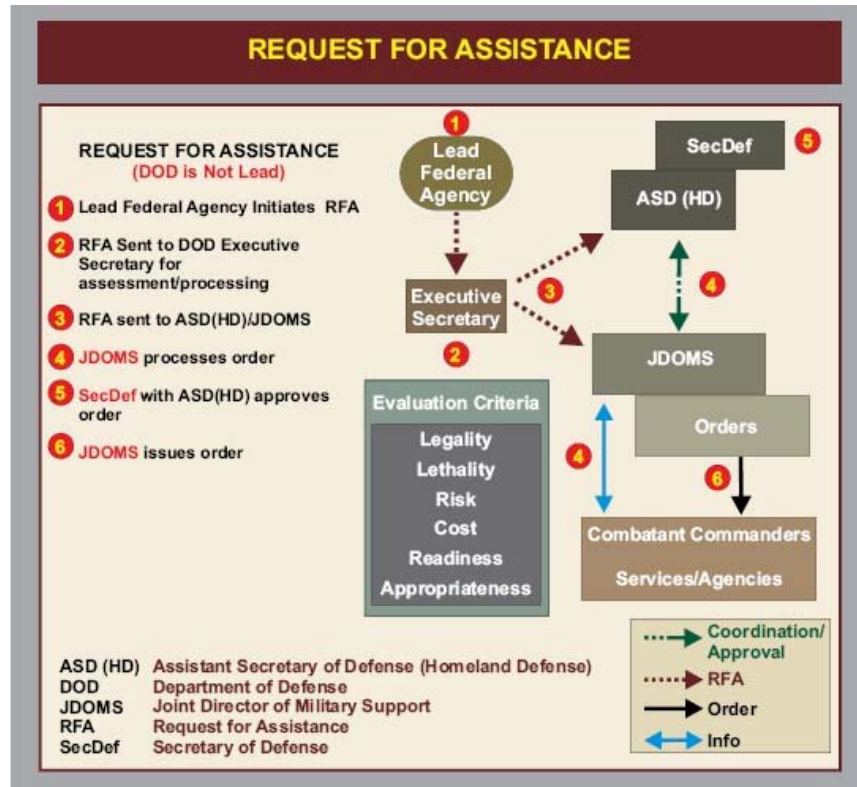


Figure 7. Request for Military Assistance Process (From: Joint Pub 3-26, *Homeland Security*, Chapter 4, 11.)

IV. IMMEDIATE RESPONSE AUTHORITY

A. OVERVIEW

Defense Support to Civil Authorities (DSCA) roles and missions have become more complex and have become a growing homeland security mission set for the U.S. military. Though often times misunderstood or given limited priority, a significant homeland security role and authority of military commanders' throughout the U.S. is provided under the DoD's Immediate Response Authority provision. The DoD's Immediate Response Authority provision provides local military commanders (and responsible officials of other DoD components) the authority to rapidly respond and provide immediate assistance to civil authorities and first responders in order to save lives, prevent human suffering, or mitigate great property damage. However, the traditional assumption that the Department of Defense is a resource of last resort for domestic first responders may require re-examination if the U.S. military, through its IRA provision, is to become a fully effective and capable resource.¹⁸⁴

In response to the criticism stemming from the federal response to Hurricane Katrina, the DoD has deemed it reasonable to reexamine and perhaps redefine the DoD's role in response to truly catastrophic events. "Our performance was better than our plans (during Hurricane Katrina), and it's time to close that gap" remarked Paul McHale, Assistant Secretary of Defense for Homeland Security.¹⁸⁵ The lessons of 9/11 and Hurricane Katrina must not go unheeded. We must, as a nation, not only increase our capabilities to prevent attacks and disasters, but also improve national preparedness to respond to disasters that occur despite our best preventative measures. Hurricanes and other disasters will happen again -- it is only a matter of where and when. Before the U.S. government expands the DoD's role in domestic disaster response, a critical question that must be further examined and determined is whether "we need a larger DoD role—or just a smarter one?"¹⁸⁶

¹⁸⁴ Bowman et al, *Hurricane Katrina: DoD Disaster Response, Summary Page*.

¹⁸⁵ Krause et al, "An Interview with Assistant Secretary of Defense for Homeland Security: Paul McHale," 15.

¹⁸⁶ House of Representatives, *A Failure of Initiative*, 16.

Closing the federal response “gap” will require a thorough review of the DoD’s primary mechanism and resource for providing immediate disaster support and assistance—the IRA provision. Reviewing, assessing, and identifying issues (such as strategic guidance, oversight, and training) that currently support or hinder the DoD’s IRA provision would not only help determine the institutional health and strength of the provision, but also help identify current barriers which may be limiting the preparedness of military commanders and their installations to act under this federal response authority. Limiting these barriers and improving the IRA provision would certainly help the DoD and DHS reduce federal disaster response ambiguities and may eventually lead to a more concerted and effective national homeland security strategy. An accurate assessment of the IRA provision’s current state of readiness and level of effectiveness is clearly needed and should be the critical first step in determining whether the DoD’s provision for providing immediate disaster assistance needs to be expanded or simply improved. In a perfect state of preparedness, the DoD’s IRA provision would not always be utilized as a first course of action or the last; but it should always be an effective and efficient means for providing immediate military aid and assistance to Americans in times of crisis.

B. HISTORICAL PERSPECTIVE

The IRA exception to the Stafford Act is addressed in several DoD directives governing DSCA operations. Through this provision, local military commanders (and responsible officials of other DoD components) are authorized to take “necessary action” to respond to requests from civil authorities. Commanders may, under the IRA, provide immediate resources and assistance to civil authorities without prior approval or prior declaration under the Stafford Act when a civil emergency or attack overwhelms the capabilities of local authorities. According to the defense directive, these actions are authorized when imminently serious conditions necessitate immediate action “to save lives, prevent human suffering, or mitigate great property damage.”¹⁸⁷

Although the IRA provision is not provided for in any formal legislative statute, it is said to have deep historical roots and has been acted upon in response to events as far

¹⁸⁷ “Military Support to Civil Authorities,” DoD Directive 3025.1, Para 4.5.1, 7.

back as the 1906 San Francisco earthquake and as recent as the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, and following the 2005 landfall of Hurricane Katrina.¹⁸⁸

In the aftermath of the 1995 Oklahoma City bombing, commanders at nearby Fort Still and Tinker Air Force Base utilized the IRA provision to provide immediate military response and support to local civil authorities. The commander at Fort Still provided two medical evacuation helicopters, explosive ordnance personnel, and two bomb detection dog teams.¹⁸⁹ While the commander at Tinker, provided two ambulances and a sixty-six person rescue team utilizing their IRA.

During Hurricane Katrina, military commanders at various levels were encouraged to take actions utilizing their immediate response authority. In the aftermath of the storm's landfall, USNORTHCOM issued an Execute Order to encourage military commanders located "anywhere within the Joint Operating Area" to provide immediate assistance provided they coordinate their response through USNORTHCOM's deployed task force, JTF-Katrina.¹⁹⁰ The Deputy SecDef and the CJCS also "encouraged commanders to use their inherent immediate response authority to pre-position assets into the disaster area... and provide assistance using their expanded immediate response authority."¹⁹¹ The exact amount of IRA actions taken under these encouragements is unclear and was not tracked. However, what is somewhat obvious in the issuing of these written and verbal orders during Hurricane Katrina, is that some (if not many) U.S. military commanders were unaware or unsure of their inherent authority under the DoD's IRA provision, and thus slower to provide military aid and assistance during the immediate aftermath of Hurricane Katrina.

The DoD was least effective in the immediate phases of the Katrina operation (before landfall and immediately after landfall). During these first phases, the DoD responded "in accordance with its traditional posture under the NRP" and provided

¹⁸⁸ Winthrop, 3 and 5.

¹⁸⁹ Ibid., 3.

¹⁹⁰ U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared*, Chapter 26, 26.

¹⁹¹ Ibid.

assistance only after receiving DSCA requests from the lead federal agency, FEMA.¹⁹² However, DoD officials eventually began to realize the catastrophic nature of the disaster, and began to “shift” from their traditional reactive approach to a more proactive mobilization of military assets and personnel.¹⁹³ “This third phase represented a departure from the DoD’s traditional practice (of formally processing DSCA requests) and enabled the DoD to respond to requests for assistance in a (more) timelier manner.”¹⁹⁴

The slow and delayed response by federal government officials and agencies during Hurricane Katrina resulted in much political and public debate. This debate also drew some concern regarding the DoD’s preparedness to mitigate the effects of domestic disasters. Though the DoD’s preparedness and response to Katrina was determined to be in concert with its role under the NRP, some contend additional DoD “preparations in advance of specific requests for support could have enabled a more rapid (DoD) response.”¹⁹⁵ The White House also asserted that the DoD’s DSCA approval process of converting individual mission assignments into “Requests for Assistance” and reviewing requests for “legality and appropriateness” was overly bureaucratic and resulted in critical needs not being met.¹⁹⁶ Could the DoD’s IRA provision (with its streamlined request, approval and response mechanism) have played a bigger part in mitigating the pain and suffering inflicted by Katrina? Is the DoD’s IRA provision prepared and capable of playing a bigger role in disaster response? In the federal government’s official report on the lessons learned during Hurricane Katrina, the DoD has been urged to expand domestic planning with the DHS to delineate when the U.S. military may lead the federal response and to work together with “state officials to improve the integration of military response capabilities.”¹⁹⁷ The report also urges the DoD to revise its current IRA provision “to allow commanders, in appropriate circumstances, to exercise IRA even

¹⁹² U.S. Senate, *Hurricane Katrina, A Nation Still Unprepared*, Chapter 26, 11.

¹⁹³ *Ibid.*, 26.

¹⁹⁴ *Ibid.*, 11.

¹⁹⁵ *Ibid.*, 7.

¹⁹⁶ *Ibid.*, 19.

¹⁹⁷ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 94.

without a request from local authorities.”¹⁹⁸ While an expanded IRA authority may provide for a more flexible and rapid military response to man-made or natural disasters, this initiative will certainly not be without consequence or political debate due to the potential for increased use of the military for domestic operations and activities.

The DoD’s IRA provision must become less ambiguous and better intertwined with the mechanisms and processes by which federal/state/and local agencies currently plan, train, coordinate, and respond to domestic disasters. This will require deliberate and aggressive steps to clarify the role of the provision while also alleviating many of the current barriers to its current effectiveness. Additionally, the legal, national strategy, and policy issues impacting federal and DoD domestic preparedness and response will also require reevaluation and/or clarification. This will not be an easy endeavor; however, a more effective and concerted national preparedness system will be well worth the effort.

C. LEGAL PERSPECTIVE

While the Immediate Response Authority doctrine has firm historical roots, there are no statutes or constitutional provisions which expressly authorize the President, much less a military commander, to provide immediate disaster assistance.¹⁹⁹ The common law principle of *necessity*, according to Winthrop, is the rationale that is most often cited to support IRA.²⁰⁰ The Supreme Court, in *Mitchell v. Harmony*, described the ‘necessity’ doctrine as follows:

We are clearly of the opinion that in all of these cases the danger must be immediate and impending; or the necessity urgent of the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. Every case must depend on its own circumstances. It is the emergency that gives the right, and the emergency must be shown to exist before the taking can be justified.²⁰¹

¹⁹⁸ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 94.

¹⁹⁹ Winthrop, 5

²⁰⁰ Ibid.

²⁰¹ Ibid., 5-6.

Although this Supreme Court case does not specifically address emergencies during disaster relief, it has been considered not unreasonable to extend this application to such situations.²⁰²

In addition to providing guidelines that limit the types of response activities that can be undertaken by the military, current DoD directives also restrict and limit response authority. First, consistent with concerns of federalism, IRA must be facilitated through a formal request (written or verbal) from a non-military federal, state, or local government authority. Secondly, military commanders must seek reimbursement for its services; however, their response should not be delayed or denied because of inability or unwillingness to reimburse the DoD. Lastly, immediate disaster response activities do not take precedence over a military installation's primary wartime mission. This provision reflects concerns over draining DoD assets and the congressional recognition that the armed forces has the ultimate responsibility to defend the nation and, therefore, readiness should not be seriously compromised by non-DoD agencies.²⁰³

Ambiguity within the IRA's current legal authority may also be limiting operational planning and execution during certain domestic incidents. For example, according to NRP, actions under the IRA provision should be consistent with the Posse Comitatus Act; however, various sources, including a 2005 Congressional Review Service Report, identifies the IRA provision as an exclusion to the Posse Comitatus Act thereby allowing active military personnel to engage in law enforcement activities.²⁰⁴ This apparent contradiction limits clarity regarding a military commander's freedom of action to direct and provide immediate law enforcement support to facilitate or regain civil government functions.

The President's 2002 National Strategy for Homeland Security called for a review of the legal authority for DSCA operations.²⁰⁵ The DoD's IRA provision, being outside

²⁰² Winthrop, 6.

²⁰³ 10 U.S.C., 376 (1995), in Winthrop, 8.

²⁰⁴ Jennifer Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues*, (Washington D.C., Congressional Review Service, Library of Congress, 16 September 2005), 6.

²⁰⁵ The White House, *The National Strategy for Homeland Security*, 48.

the typical DSCA legal framework provided under the Stafford Act, would be a prime candidate for review and clarification.

D. CURRENT POLICY AND GUIDANCE

Directives and guidance governing the IRA provision can be found in several DoD documents. The primary documents include:

- Joint Publication 3-26, *Homeland Security*
- DoD Manual 3025.1, *Manual for Civil Emergencies*
- DoD Directive 3025.1, *Military Support to Civil Authorities*
- DoD Directive 3025.15, *Military Assistance to Civil Authorities*

It worth noting that the IRA provision does not appear in the DoD's core strategy document for providing civil support planning and guidance, the *Military Strategy for Homeland Defense and Civil Support*. Likewise, the provision is not reflected in USNORTHCOM's primary strategy document for guiding homeland security operations, the *Department of Defense Homeland Security Joint Operating Concept*.

Within the documents that address the DoD's IRA provision, significant policy and guidance are provided below:

1. Authorized Actions

According to the defense directive, commanders may utilize the IRA provision to provide the following types of activities/support: ²⁰⁶

- Rescue, evacuation, and emergency medical treatment of casualties, maintenance or restoration of emergency medical capabilities, and safeguarding the public health.
- Emergency restoration of essential public services (including fire-fighting, water, communications, transportation, power, and fuel).
- Emergency clearance of debris, rubble, and explosive ordnance from public facilities and other areas to permit rescue or movement of people and restoration of essential services.
- Recover, identification, registration, and disposal of the dead
- Monitoring and decontaminating radiological, chemical, and biological effects; controlling contaminated areas; and reporting through national warning and hazard control systems
- Roadway movement control and planning

²⁰⁶ "Military Support to Civil Authorities," DoD Directive 3025.1, Para 4.5.4, 8.

- Safeguarding, collecting, and distributing food, essential supplies, and materiel on the basis of critical priorities
- Damage assessment
- Interim emergency communications
- Facilitating the reestablishment of civil government functions

2. Levels of Authority

The DoD currently stipulates two primary authorities involved in initial IRA request and response activities—the non-DoD civil authority requesting the assistance and the DoD official using their IRA to respond to the civil request. According to the DoD directive, any “local military commander” or “responsible officials of other DoD Component” are authorized to provide IRA assistance.²⁰⁷ While there are typically many different levels of commanders assigned to a military installation or agency, the DoD directives do not clarify or draw a distinction. However, some services have clarified the level in which IRA authority resides. For example, the Air Force has placed primary IRA planning and response authority with the senior installation commander (typically an O-6 or Brigadier General).²⁰⁸

The civil authority authorized to request military assistance under the IRA provision, according the DoD directive, may be any “nonmilitary federal, state, or local government agency.”²⁰⁹ However, this definition does not clearly specify the level of authority within these “agencies” that may request assistance. To help clarify this authority, the JCS doctrine for homeland security operations further defines civil authorities as “those elected and appointed officers and employees who constitute the government of the United States... and its possessions and territories.”²¹⁰ As such, this authority clearly applies to a variety of agencies and positions involved in managing disaster response including fire, police, emergency management officials, and city managers and mayors.

²⁰⁷ “Military Support to Civil Authorities,” DoD Directive 3025.1, Para 4.5.4, 8.

²⁰⁸ “Homeland Operations,” Air Force Doctrine Document 2-10, 26.

²⁰⁹ “Military Preparedness Liaison Officer (EPLO) Program,” DoD Directive 3025.16, 8.

²¹⁰ “Homeland Security,” Joint Publication 3-26, glossary, terms and definitions, 5.

3. Planning and Coordinating Mechanisms

Planning and coordination activities for the IRA provision are not specifically discussed within the primary DoD directives governing IRA. In order to better prepare for DSCA missions, the JCS doctrine for homeland security addresses the use of memorandums of agreement (MOA) or understanding (MOU) as a form of mutual aid agreement between the DoD and civil agencies which may help define the scope of support to be provided; “either routinely or in an emergency.”²¹¹ The Air Force highly encourages installation commanders to work with their local communities and to develop MOAs to specifically facilitate IRA planning and response.²¹²

The Air Force also encourages key installation personnel to become “familiar with the layout of the communities that surround the installation, the hazards to Air Force personnel, and the type of support that may be required” under IRA.²¹³ This includes being “aware of the various industries or facilities in the surrounding communities and the potential hazard or threat they pose to the installation.”²¹⁴ To assist installation in the developing their MOAs with local communities, the Air Force currently recommends installation commander’s consider and provide the following details in their support agreements with local authorities:²¹⁵

- Circumstances for requesting IRA assistance
- Procedures for requesting IRA assistance
- Procedures for responding to and communicating with lead response elements
- Procedures for cost accounting and potential reimbursement
- Circumstances and procedures for withdrawing IRA support
- Procedures for scheduling and conducting IRA training and exercises

²¹¹ “Homeland Security,” Joint Publication 3-26, Chapter IV, 12.

²¹² “Homeland Operations,” Air Force Doctrine Document 2-10, 26.

²¹³ Ibid., 31.

²¹⁴ Ibid., 25.

²¹⁵ Ibid., 26-27.

4. Request Mechanisms

According to DoD directive, requests for IRA assistance may either be written or verbal. “DoD components that receive verbal requests from civil authorities... may initiate informal planning and, if required, immediately respond as authorized” under IRA.²¹⁶ However, verbal requests for IRA assistance “must be followed by a written request” as soon as practical.²¹⁷ Civil authorities are also encouraged to request assistance from the nearest DoD component or military commander. While this is not a formal requirement, it certainly has merit since the proximity of resources will directly impact response timing.

5. Response Considerations and Approval

According to DoD directive, a commander’s primary consideration prior to approving IRA requests is whether the military response is required “to help save lives, prevent human suffering, or mitigate great property damage.”²¹⁸ The DoD considers IRA requests to be “time-sensitive and should be received from local government officials within 24 hours following completion of a damage assessment.”²¹⁹ Once imminently serious conditions no longer exist, commanders are encouraged to disengage from IRA response activities.²²⁰

There are other considerations worth noting and are illustrated in *Figure 8*. Due to their primary warfighting missions and obligations, “commanders will always consider what the impact of providing immediate response will have on their military mission requirements and (will) not jeopardize them.”²²¹ Furthermore, DoD commanders or officials acting under the IRA are also required to “report the request through the command channels to the National Military Command Center (NMCC) by the most expeditious means available.”²²² These steps are required not only to advise senior

²¹⁶ “Military Assistance to Civil Authorities,” DoD Directive 3025.15, 4.

²¹⁷ Ibid.

²¹⁸ “Military Support to Civil Authorities,” DoD Directive 3025.1, 7.

²¹⁹ “Manual for Civil Emergencies,” DoD Manual 3025-1, Chapter 2, 48.

²²⁰ “Homeland Security,” Joint Publication 3-26, Chapter II, 4.

²²¹ “Manual for Civil Emergencies,” DoD Manual 3025-1, Chapter 2, 48.

²²² “Homeland Security,” Joint Publication 3-26, Chapter II, 4.

officials of DoD activities, but to seek additional approval or authorization from higher headquarters to facilitate further actions. What is unclear in this requirement, is whether local commanders will seek approval prior to initiating immediate response and if so, what potential delay this may cause.

Another deep routed consideration for normal DSCA operations is “that DoD resources are provided only when response and recovery requirements are beyond the capabilities of civil authorities.”²²³ It is unclear whether this pertains to the IRA or not when the actions are required to save lives, prevent human suffering, or mitigate great property damage.

Finally, commanders must consider financial costs and seek cost-reimbursements for IRA activities; however the IRA provision dictates immediate responses “should not be delayed or denied because of the inability or unwillingness” to reimburse the DoD.²²⁴

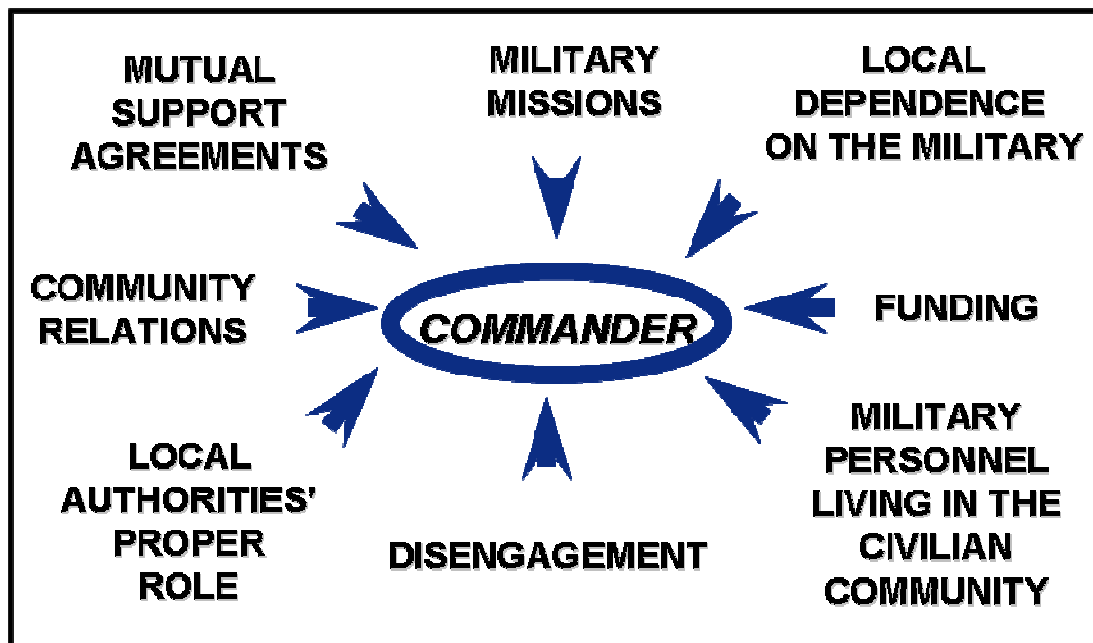


Figure 8. IRA Considerations (From: AFNSEP Installation Visit Briefing, August 2006, Briefing template provided by AFNSEP, September 2006)

²²³ “Military Support to Civil Authorities,” DoD Directive 3025.1, 6.

²²⁴ Ibid., 8.

E. CURRENT BARRIERS TO AN EFFECTIVE IMMEDIATE RESPONSE AUTHORITY

In evaluating the DoD's Immediate Response Authority, several barriers to the provision's overall effectiveness became apparent during the research. Current barriers include:

1. The U.S. Military's Support Paradigm

The U.S. military's traditional supporting role in responding to domestic emergencies and disasters is a paradigm that is deeply entrenched. Current DoD guidance and funding priorities make it clear that "domestic natural disaster response is not within the DoD's primary mission set and will only be undertaken when forces are available or if directed by the President or SecDef [Secretary of Defense]."²²⁵ As a result of this deeply rooted paradigm, the DoD's IRA provision has received limited attention and priority. While the IRA provision resides in various defense documents, the provision remains ambiguous and absent from major national initiatives to improve federal disaster preparedness and response. For example, the National Strategy for Homeland Security called on the Department of Homeland Security to consolidate all existing federal government emergency response plans into one genuinely all-discipline, all-hazard plan that would cover all incidents of national significance; however, the resulting National Response Plan contains only a limited reference to the DoD's Immediate Response Authority (*Below*). The NRP also does not clearly identify the DoD as a potential lead federal agency when acting under the IRA provision.

Imminently serious conditions resulting from any civil emergency may require immediate action to save lives, prevent human suffering, or mitigate property damage. When such conditions exist and time does not permit approval from higher headquarters, local military commanders and responsible officials from DoD components and agencies are authorized by DoD directives and pre-approval by the Secretary of Defense, subject to any supplemental direction that may be provided by their DoD component, to take necessary action consistent with the Posse Comitatus Act (18 U.S.C., 1385) All such necessary action is referred to as "Immediate Response."²²⁶

²²⁵ U.S. Senate, *Hurricane Katrina: A Nation Still Unprepared*, Chapter 26, 6.

²²⁶ Department of Homeland Security, *National Response Plan*, 43. IRA is also addressed briefly in the NRP's Nuclear/Radiological Incident Annex, NUC, under DoD responsibilities.

The DoD's primary strategy document for civil support also reflects the low priority placed on DSCA activities. According to the Strategy for Homeland Defense and Civil Support, the DoD has established five key objectives to help achieve the strategy's strategic goal of protecting the United States from attack.²²⁷ The DoD lists the five key objectives in order of priority:²²⁸

- 1) Achieve maximum awareness of potential threats
- 2) Deter, intercept, and defeat threats at a safe distance from the United States, and US territories and possessions.
- 3) Achieve mission assurance
- 4) Ensure DoD's ability to support civil authorities in domestic CBRNE consequence management
- 5) Improve domestic and international partner capabilities for homeland defense and homeland security.

In considering this prioritized list, it is clear that the DoD does not currently place high priority on DSCA activities and considers its core civil support capability to be helping to manage the consequences of a domestic CBRNE (chemical, biological, radiological, nuclear, or high-yield explosive) mass casualty attack. Under the strategy's definition for DSCA it states that DoD support is only provided when directed by the President or the Secretary of Defense.²²⁹ This statement runs counter to the military commander's pre-approved response authority under the IRA. Furthermore, the National Guard is also mentioned in several DoD documents as being the primary lead military component for DSCA, illustrating why the IRA provision (which applies primarily to the Active component) has remained ambiguous.

2. Lack of Current and Effective Guidance

According to the DoD, the Strategy for Homeland Defense and Civil Support is intended to "guide all DoD components across the full range of homeland defense and civil support activities."²³⁰ However, the strategy does not once reference the DoD's IRA or its intended purpose and capabilities. While the NRP does briefly address the

²²⁷ Department of Defense, *Strategy for Homeland Defense and Civil Support*, 14.

²²⁸ *Ibid.*, 15.

²²⁹ *Ibid.*, 6.

²³⁰ *Ibid.*, 9.

IRA provision, it does not stipulate who can request IRA assistance, the actions authorized under IRA, or the methods for planning or integrated IRA into local and state emergency management response and recovery activities. Furthermore, compounding the limited reference in the National Response Plan, FEMA's guide to the disaster declaration process has no reference to the DoD's IRA whatsoever!²³¹ This may explain why the IRA provision, and the potential resource it represents, has remained in obscurity and does not reflect some state emergency plans. For example, the California Emergency Plan, which "defines the emergency management system used for all emergencies in California," does not address local military support under the IRA provision.²³²

Some may argue that the benefit of limited guidance is that it provides more flexibility to those who may need to act upon it, however, there is a fine line between broad and vague guidance. The DoD's guidance governing IRA has crossed that fine line due to its directives being primarily outdated, un-standardized, and overly vague. In fact, less than three total pages are dedicated to providing IRA guidance within the DoD's four primary documents which reference the provision. Furthermore, since being written in the 1990s, multiple changes, including the establishment of ASD-HD and USNORTHCOM, have taken place while the directive and guidance for IRA has remained in obscurity.

3. Lack of Central Oversight

The DoD's IRA provision is in desperate need of a Champion

Although IRA is a DoD-level provision, primary oversight for the majority of the provision's guidance, preparedness, and planning falls on the individual armed services and their commanders. As such, the "jointness" so heavily advocated by the military to ensure successful mission planning and unity of effort is strikingly void in the IRA provision and its guidance. The only joint coordination that may occasionally occur at the local and state levels is through the interaction of the service's Reserve Emergency

²³¹ Department of Homeland Defense, *A Guide to the Disaster Declaration Process*, (Washington D.C., Federal Emergency Management Agency, Department of Homeland Security), available at http://www.fema.gov/rebuild/recover/dec_guide.shtm, accessed 20 Sep 2006.

²³² For example, the State of California's Emergency Plan dated September 2005, does not reference the IRA. Plan available at: www.oes.ca.gov, accessed 22 October 2006.

Preparedness Liaison Officers (EPLO). However, EPLOs are primarily managed by the individual armed services and the only DoD-mandated coordination activity between EPLOs consists of an annual joint EPLO conference or workshop.²³³ Clearly, DoD-level oversight of the IRA provision appears to be lacking. Several oversight shortfalls within USNORTHCOM and DHS were also identified during this research:

USNORTHCOM – Although the President established USNORTHCOM to plan, organize, and execute all military homeland defense and civil support missions in the continental United States, Alaska, and the offshore waters within its area of responsibility, the command has not taken on oversight of the DoD’s Immediate Response Authority.²³⁴ During Hurricane Katrina, USNORTHCOM was criticized for not having “adequate insight into state capabilities or adequate interface with state governors.”²³⁵ Could oversight of the IRA provision help improve this insight? It is possible that the liaison between local military commanders and civil authorities in developing IRA plans may help USNORTHCOM close this gap someday.

DEPARTMENT OF HOMELAND SECURITY - DHS has limited, if any, oversight of IRA activities. As the lead federal agency responsible for coordinating federal assistance prior to, during, and after domestic emergencies and disasters, having no situational awareness of IRA preparedness and response capabilities results in a major and critical blind-spot for DHS.

4. DoD Force Structure and Disaster Preparedness

Due to homeland defense (deter-detect-intercept-defeat) missions being its central and paramount priority, DoD has remained reluctant to posture or assign large numbers of the Active Component forces to direct civil-support roles or missions. The DoD has always sought only narrow responsibilities and missions for domestic operations and has worked hard to keep them thin. This effort reflects the DoD’s support paradigm and the fact that the department neither wants nor prepares extensively for civil-military

²³³ “Military Emergency Preparedness Liaison Officer (EPLO) Program,” DoD Directive 3025.16, 4.

²³⁴ The White House, *9/11 Five Years Later: Successes and Challenges*, (Washington D.C., The White House, September 2006), 18.

²³⁵ House of Representatives, *A Failure of Initiative*, 4.

operations on a continuing basis.²³⁶ The small and concentrated missions of the joint task forces assigned to USNORTHCOM and USPACOM are the notable exceptions. According to the DoD's Strategy for Homeland Security and Defense, "with the exception of dedicated command and element (JTF-Civil Support) and the National Guard's WMD Civil Support Teams, DoD will continue to rely on dual-capable forces for consequence management and other DSCA activities (including IRA)." These dual-capable forces, as the strategy calls them, are essentially the 2.5 million service members assigned to bases throughout the U.S. and the world. However, it is unclear how the DoD deliberately trains and prepares the majority of these service members for their dual missions including DSCA and IRA. Furthermore, since IRA operations do not take precedence over their primary warfighting missions, a commander's commitment of military personnel and resources for IRA activities will be somewhat constrained by current DoD priorities, guidelines, and provisions.

Clearly, the DoD is not funded, organized, trained, or prepared to effectively respond to numerous or every domestic disaster. However, improving IRA planning and preparedness through domestic DoD installations and agencies represent a unique and valuable emergency response resource. This resource (totaling over 2,900 different sites in all 50 states and U.S. territories²³⁷) may just be the critical enabler required during the next major U.S. disaster.

5. Ambiguity Regarding Response Authority

Although military commanders (and responsible officials of other DoD Agencies) currently possess inherent/pre-approved authority under the IRA provision to conduct military operations to save lives, to prevent human suffering, or mitigate great property damage, the full and unrestricted local authority to respond to disasters appears to be somewhat ambiguous. For example, the joint publication for homeland security stipulates that when actions are taken under the immediate response authority, "commanders must report and gain approval from the SecDef... at the earliest possible

²³⁶ John Gentry, "Complex Civil-Military Operations," *NWC Review*, autumn 2000, 5.

²³⁷ Figures from the Department of Defense, *Base Structure Report, Fiscal Year 2005 Baseline*, (Washington D.C., Deputy Under Secretary of Defense, Installations & Environment), 4.

opportunity.”²³⁸ Likewise, the DoD directive currently states: “Any commander or official acting under the Immediate Response Authority of this Directive shall advise the DoD Executive Agent through command channels, by the most expeditious means available, and shall seek approval or additional authorizations, as need.”²³⁹ The requirement for commanders to “gain” or “seek” approval tends to contradict the IRA provision’s construct of responding without prior approval to ensure rapid actions are taken. This perceived contradiction may possibly create confusion or delays at the local level which could impact the timeliness of local IRA responses.

6. Lack of Clearly Established Areas of Responsibility (AOR)

One of the flexible features of the current IRA provision is also probably one of its greatest shortfalls. DoD directives do not currently clarify the areas of responsibility in which commander’s should be prepared to respond to under their IRA. By not defining the “local community” AOR, military commanders at various levels and locations can respond to civil requests using their Immediate Response Authority. Unfortunately, this flexibility tends to contradict with traditional military operational planning where clearly delineated areas of responsibilities tend to go hand-in-hand with clear lines of authority (or chain of command). In order to help clarify areas of responsibilities, the Air Force has advised homeland installations to develop a Memorandum of Understanding or Agreement with the local community to address the possibility of an incident and to clarify roles/responsibilities.²⁴⁰ However, neither the Air Force, nor the current DoD directives, stipulates or clarifies what the “local community” actually entails. Therefore, military commanders will likely only coordinate and develop support agreements with civil authorities within their general proximity. Consequently, there are potentially hundreds, if not thousands, of communities within the United States that are not covered under any agreement with a DoD installation/commander due to varying distances from DoD installations or facilities. Results from a survey conducted in 2006 of city mayors from 38 different U.S. states reflected this problem. According to the survey, 28% of the 183 cities polled did not have an established support plan with a

²³⁸ “Homeland Security,” Joint Publication 3-26, Chapter IV, 12.

²³⁹ “Military Support to Civil Authorities,” DoD Directive 3025.1, Para. 4.5.3, 8.

²⁴⁰ “Homeland Operations,” Air Force Doctrine Document 2-10, 31.

nearby military installation.²⁴¹ This problem is most likely due to two related issues; 1) installation commanders are limiting MOUs to only those communities within their immediate vicinity and 2) civil authorities are not seeking out military support agreements due to their proximity and/or lack of knowledge/understanding of the IRA provision.

One of the first questions a military commander needs clarified is: “What am I responsible for?” Not knowing the answer to that question leaves many more questions unasked and unanswered. These AOR gaps will result in incomplete and ineffective IRA coverage, planning, preparedness, and response.

7. Lack of Consistent and Effective Planning

The National Strategy for Homeland Security identified planning for military support to civil authorities as one of the twelve major initiatives in the area of national emergency preparedness and response.²⁴² However, planning for IRA activities has received limited DoD oversight and attention since the publication of the governing directives in the 1990s. Although assigned the responsibility to update “plans to provide military support to domestic civil authorities in response to natural and man-made disasters,” USNORTHCOM does not currently oversee IRA preparedness and response planning.²⁴³ USNORTHCOM considers IRA planning to be a “local commander responsibility” and therefore, has not provided additional guidance or directives to facilitate, update, or improve planning for IRA activities within its AOR.²⁴⁴

While individual military services have continued to provide broad guidance to facilitate IRA planning, these efforts have been mostly limited due to resources and mission priorities (as discussed previously). Furthermore, mirroring the ad hoc nature of most DSCA operations, deliberate planning for IRA operations is limited. The Air Force currently advises regular and Reserve installation commanders to develop local support

²⁴¹ Homeland Security Monitoring Center, *Five Years Post 9/11, One Year Post Katrina: The State of America's Readiness*, 2006 Survey on Homeland Security and Emergency Preparedness, (United States Conference of Mayors, Homeland Security Monitoring Center, 26 July 2006), available at www.usmayors.org, accessed 9 October 2006.

²⁴² The White House, *National Strategy for Homeland Security*, X.

²⁴³ *Ibid.*, 45.

²⁴⁴ Donald Miles, USNORTHCOM Public Affairs, Future Operations Division, Interview by Eric Leshinsky, Telephone, 16 August 2006.

agreements (MOU/A) and plan for situations that would require assigned units to assist local authorities to include:²⁴⁵

- Be aware of various industries and other facilities in the surrounding communities
- Assess what potential hazards or threat these industries/facilities pose
- Determine what type of assistance each may require in the event of an emergency
- Utilize operational risk management process
- Be aware of the installation's critical dependencies on the surrounding community

Despite providing this general guidance and oversight, the Air Force has recently noted problems and discrepancies regarding civil support planning. During an audit conducted at 15 Air Force installations in 2005, the Air Force Audit Agency found installations were “not fully prepared to provide emergency support to civil authorities.”²⁴⁶ The audit identified several base plans lacking “detailed planning factors to support critical DSCA planning elements.”²⁴⁷ Furthermore, six of 14 support plans reviewed were outdated (over 12 months old), 5 of 14 installations had not conducted a DSCA-specific exercise in the past 1-2 years, and 7 of 14 installation exercise plans did not contain DSCA exercises at all.²⁴⁸

Clearly the lack of IRA strategic planning guidance and oversight for IRA activities will continue to limit military preparedness and priority for these missions. Strategic guidance and oversight provides the foundation to conduct deliberate planning. Without it, effective IRA planning initiatives will be the exception and not the norm.

8. Lack of Effective Training and Exercises

According to the DoD's Strategy for Homeland Defense and Civil Support, the military's Active Duty, National Guard, and Reserve forces will be “trained and equipped primarily for warfighting missions in the forward (overseas) regions and (land and sea)

²⁴⁵ “Homeland Operations,” Air Force Doctrine Document 2-10, 25.

²⁴⁶ Air Force Audit Agency, *Air Force Support to Civil Authorities*, Project F2005-FD3000-0033.000, (San Antonio TX, Air Force Audit Agency, Department of the Air Force), 2. Audit report provided by the Air Force Civil Support Division (Washington D.C., AF/A3SHC), 20 October 2006.

²⁴⁷ Ibid.

²⁴⁸ Ibid., 3.

approaches to the continental United States.”²⁴⁹ Due to this warfighting focus and priority, training initiatives for DSCA activities are greatly limited in scope. Current DoD directives governing the provision do not provide particular guidance for IRA training or exercises. Many EPLOs, specifically within the Air Force²⁵⁰, currently provide installation commanders with an overview of the IRA authority and their responsibilities during yearly installation visits; however, it is unknown how these visits and briefings impact or improves overall IRA preparedness.

To facilitate IRA preparedness, the Air Force currently mandates that installation disaster response personnel and commanders should receive training on the national and military response program. “Installation responders must understand the circumstances under which military units provide support to civil authorities, when support should be withdrawn, the reporting requirements to higher headquarters, and the validation procedures for requests from federal coordination officers and state officials.”²⁵¹ However, these training requirements are not standardized in any particular format across the Air Force or the DoD; and therefore, training programs will exist at various levels of preparedness and effectiveness. The Air Force also recommends establishing procedures for conducting joint IRA exercises in order to familiarize all parties with emergency command structures and potential scenarios.²⁵² However, there are varying degrees of oversight and priority for these civil-support activities as well. During the 2005 audit on Air Force support to civil authorities, auditors found 12 out of 14 installations had either not conducted DSCA-specific exercises in 1-2 years or established plans for DSCA exercises, or both.²⁵³ It is worth also noting that current IRA training and exercise initiatives will also be limited due to the undefined “local community” in which to coordinate, train, and exercise.

²⁴⁹ Department of Defense, *Strategy for Homeland Defense and Civil Support*, 35.

²⁵⁰ Ralph Studdard, Acting Commander, Air Force National Security Emergency Preparedness officer, Interview by Eric Leshinsky, Telephone, 17 October 2006.

²⁵¹ “Homeland Operations,” Air Force Doctrine Document 2-10, 39.

²⁵² *Ibid.*, 27.

²⁵³ Air Force Audit Agency, *Air Force Support to Civil Authorities*, 3.

9. Ambiguity Regarding Requests for IRA Assistance

The civil authority authorized to request military assistance under the IRA provision appears to be overly vague. According DoD directive, any “nonmilitary federal, state, or local government agency” may request IRA assistance²⁵⁴ However, this definition does not clearly specify a level of authority within these “agencies” authorized to request IRA assistance. For example, can an Assistant City Manager request military assistance under the IRA? To help clarify this authority, the JCS doctrine for homeland security operations further defines civil authorities as “those elected and appointed officers and employees who constitute the government of the United States... and its possessions and territories.”²⁵⁵ As such, this authority apparently applies to a large variety of agencies and positions involved in domestic disaster response including fire, police, emergency management officials, and city managers and mayors.

This broad authority to request IRA assistance appears to be in direct conflict with the NRP. The NRP only sites the ability of a state governor to request federal/military assistance, even though it addresses both Stafford and non-Stafford Act requests for federal disaster support.

10. Local & State Politics and Emergency Preparedness May Limit IRA Effectiveness

Politics should not stand in the way of mitigating the affects of disasters and other domestic emergencies; however, sometimes it does. Most state governors feel that they are ultimately responsible and are in the best position to coordinate all resources to prepare for, respond to, and recover from disasters.²⁵⁶ As such, state governors have traditionally considered their position to be the primary mechanism for overseeing disaster response and for determining when (or if) federal assistance is requested. Unfortunately, often times it is not until after disaster strikes that the local and/or state authorities’ true preparedness and abilities are reviled.

Some provisions, such as the Insurrection Act, provide the President the authority to impose federal support (to include the armed forces) under certain domestic situations

²⁵⁴ “Military Emergency Preparedness Liaison Officer (EPLO) Program,” DoD Directive 3025.16, 8.

²⁵⁵ “Homeland Security,” Joint Publication 3-26, glossary, terms and definitions, 5.

²⁵⁶ House of Representatives, *A Failure of Initiative*, 15.

with or without local or state government consent. The White House's Hurricane Katrina after-actions report recommends the DoD revise its IRA policy to "allow commanders, in appropriate circumstances, to exercise IRA even without a request from local authorities."²⁵⁷ Clearly, there may come a time when military commanders should be provided the authority to respond to certain domestic emergencies without the requirement of a formal civil request; however, to impose this initiative prematurely, without addressing the current strategic and operational shortfalls of the current IRA provision, would be short-sighted and have limited positive impact.

²⁵⁷ The White House, *The Federal Response to Hurricane Katrina: Lessons Learned*, 94.

V. IMPROVING THE IMMEDIATE RESPONSE AUTHORITY

The Immediate Response Authority should not always be utilized as the first course of action or the last; but it should always be an effective and efficient means for providing immediate military aid and assistance to Americans in times of crisis.

A. RECOMMENDATIONS TO CREATE AN EFFECTIVE IMMEDIATE RESPONSE AUTHORITY

Improving the DoD's Immediate Response Authority will require a concerted effort at the local, state, and federal levels of government and, of course, within the U.S. military itself. Improving the provision and shifting the DoD's paradigm of support will also require various levels of cultural, organizational, and procedural change. These changes will likely become challenging to implement and manage. Some changes will be more difficult than others. Some will be more politically charged than others. Some may even alter the way many currently view the military's role in domestic activities to be. However, our nation and its citizens deserve the concerted national effort called for in the National Strategy for Homeland Security to help minimize the damage and synergize the recovery efforts during future disasters. Improving the DoD's Immediate Response Authority will be a large step in that direction. Initial recommendations include:

1. Institutionalize the DoD's Immediate Response Authority

A critical step to improve the DoD's IRA is partly one of mindset, as encapsulated in a Center for Strategic and International Studies report which stressed the need for the DoD to "accept civil support as a central mission and to act accordingly."²⁵⁸ Although the U.S. military's IRA is a current mechanism for initiating immediate actions to mitigate the affects of domestic disasters, the provision and its potential capabilities has commanded limited attention within the national preparedness arena. Several critical steps must be taken within various agencies to help better institutionalize the DoD's Immediate Response Authority. They include:

²⁵⁸ Christine Wormuth, *The Future of the National Guard and Reserves, The Beyond Goldwater-Nichols Phase III Report*, (Washington D.C., The Center for Strategic and International Studies, July 2006), X.

U.S. Government: Identified as a major initiative highlighted in the National Strategy for Homeland Security, a thorough review of the laws permitting the military to act within the United States should be conducted.²⁵⁹ This initiative, when initiated, should also include a thorough review of the DoD's Immediate Response Authority. By doing so, critical initial steps can be taken to institutionalize the military's IRA by providing the provision a formal legal foundation and framework similar to that provided for most DSCA activities under the Stafford Act. This foundation will hopefully provide clarity to the legal authority for IRA missions and protect DoD personnel (from civil actions and liabilities) when responding under the IRA.

Department of Defense: The DoD must continue to shift its support paradigm to a more proactive approach for missions involving DSCA. The current IRA provision clearly provides the authority for DoD installations and agencies to immediately respond to domestic emergencies, which would likely entail temporarily assuming the role and responsibility as a lead federal agency at a domestic incident. As such, the DoD must take the lead to institutionalize the IRA provision. To begin with, the DoD must improve IRA guidance. The DoD should take the initiative to improve the directives governing the IRA to help ensure the same standards of clarity, coordination, and planning as is currently undertaken for traditional military operations. At the very least, the DoD should centralize IRA guidance into a single directive and clarify roles, rules of engagement, and oversight responsibilities across the entire DoD. The IRA must be integrated within the pillars of civil support to become visible and more effective (*Figure 9*).

As the DoD agency responsible for military operations (to include civil support missions) within the Continental United States, USNORTHCOM should assume the lead role in overseeing IRA activities within its AOR. This responsibility should include oversight of IRA exercises and inspections. USNORTHCOM and USPACOM must be involved in developing and delivering ongoing training modules, exercise scenarios, and planning guidance to DoD and non-DoD agencies within their AORs. The DoD and COCOMs should also lead the development of state/regional AORs for IRA activities

²⁵⁹ The White House, *National Strategy for Homeland Security*, 48.

and planning. Within this effort, DoD should mandate the development of MOU/As strictly for IRA activities and require coordination between DoD installations and agencies within specific AORs.

Department of Homeland Security: The Department of Homeland Security must also accomplish several tasks to help institutionalize the DoD's IRA. First, DHS must revise the National Response Plan to help clarify the IRA. The NRP should provide a general, yet detailed, outline of the DoD's IRA. The overviews of federal involvement under Stafford Act and non-Stafford Act situations in Appendix 5 and 6 of the NRP should be amended to include the IRA provision. The process figures (on pages 93 and 95) should also include process option blocks for the IRA as depicted in *Figure 10*.

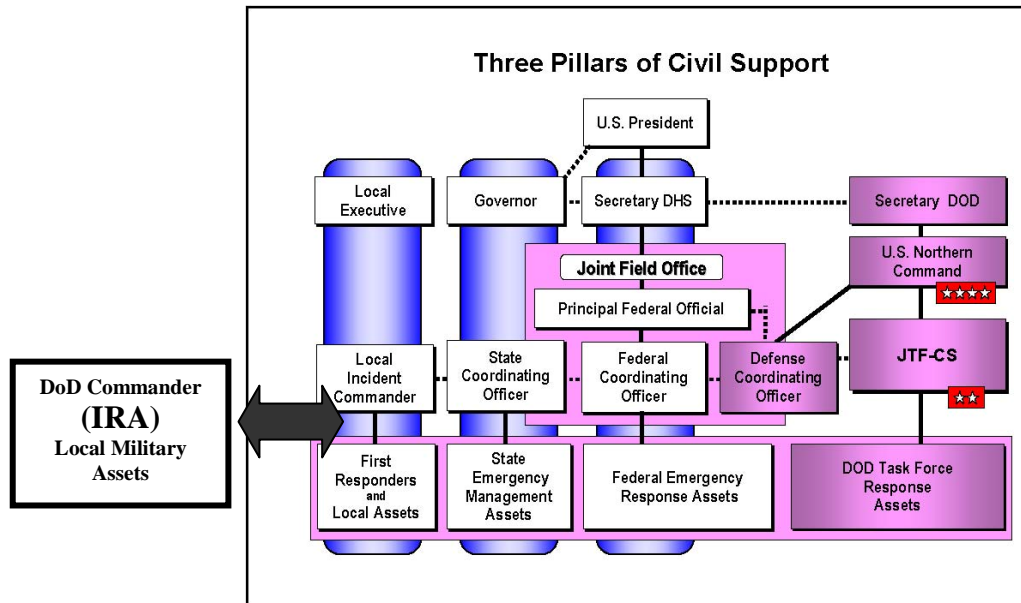


Figure 9. Pillars of Civil Support (From: DSCINT Handbook No.104, *Defense Support of Civil Authorities*, U.S. Army Training and Doctrine Command, 15 August 2005, Section II, 5)

The NRP should also clarify that various local and state authorities, and not just the state governor, has the authority to request immediate federal assistance from local

DoD installations and agencies under the IRA. The DHS should also consider adding IRA as an implementation mechanism for initiating proactive federal responses during catastrophic events in the NRP.²⁶⁰

The DHS should also work with the DoD to establish procedures to oversee and monitor IRA activities including preparedness and response. This initiative would help ensure the DHS Secretary's compliance with HSPD-5 which mandates the Secretary coordinate federal resources utilized in response to or recovery from terrorist attacks, major disasters, or other emergencies when federal resources have been requested.²⁶¹ Likewise, FEMA should also become familiar with the IRA provision and update applicable guidance to reflect IRA to help raise awareness in the emergency preparedness arena.

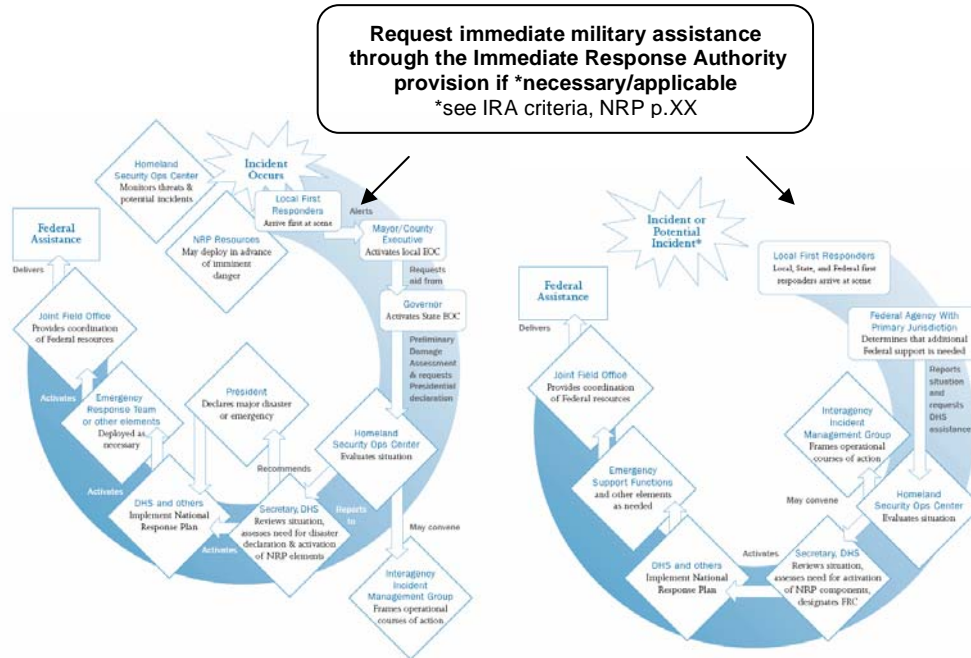


Figure 10. Overviews of Disaster Involvement (From: National Response Plan, 93/95)

Lastly, DHS should consider revising its homeland security grant program. DHS' grant criteria should mandate that local/state authorities and agencies incorporate IRA participation/coordination in their emergency response planning and exercises in order to

²⁶⁰ Department of Homeland Security, *National Response Plan*, 44.

²⁶¹ *Ibid.*, 9.

be eligible for DHS grants. DoD participation/coordination (utilizing an MOU/MOA or other mutual aid agreement) should become a prerequisite for federal homeland security grant submission and approval.

2. Improve IRA Guidance

Several issues regarding guidance outlining federal and military assistance should be amended or clarified to improve the IRA provision and reduce the ambiguities experienced during Hurricane Katrina. First and foremost, as the primary strategy document intended to guide civil support activities, the DoD's Strategy for Homeland Defense and Civil Support, should be amended to include detailed information and guidance regarding the IRA provision. Along with the strategy's current assumption that during "major catastrophes, the President will direct DoD to provide... civil support," an additional assumption should be added to clarify that local commander's may direct, when circumstances dictate, military assistance under their inherent immediate response authority.

Furthermore, the DoD should work with DHS to provide thorough guidelines and information regarding IRA in the NRP. Lastly the DoD should consider consolidating IRA guidance into a single DoD directive and/or handbook strictly dedicated to the provision. This endeavor should include clarifying critical information and questions regarding IRA to include:

- Under what criteria and precedence may IRA activities be authorized?
 - Must the local/state first responders be overwhelmed?
 - Does it matter how many lives or property is involved?
 - When may commanders respond without receipt of a civil request?
 - When should IRA activities be terminated?
- Who can request IRA assistance?
 - Local, state, federal agencies/positions/case-by-case
- Who can approve IRA assistance?
 - Base/installation/agency commanders/minimum grade requirement (Military and Civilian)
- What is the "local community" for each DoD installation/agency?
 - DoD should establish clear guidance on AORs

- DoD should establish procedures for U.S. military installations/agencies within AORs to coordinate IRA planning and response activities

3. **Improve IRA Planning**

As highlighted in the U.S. Senate Committee report on Hurricane Katrina, the ability to effectively respond to mass disasters and other emergencies is a “critical role of every level of government. It is a role that requires an unusual level of planning, coordination, and dispatch among governments’ diverse units.”²⁶² Improving the DoD’s IRA will also require a concerted effort in the area of planning and preparation. Effective preparedness for IRA activities will only be achieved through collaborative and active planning processes involving local, state, and federal authorities and numerous government and non-government agencies. Planning initiatives should include:

a. Community-base planning: We can’t plan for every scenario, but we should start by planning for those events most likely to occur. As such, planning methodology at the local and state levels must involve a complete analysis of current first responder capabilities, potential scenarios, and overall community threats and resources. Local and state civil authorities, emergency managers, and military leaders should work together to develop various courses of actions necessary to mitigate the affects of potential disasters. Mutual aid agreements should be established between civilian and military agencies as appropriate to clarify roles, responsibilities, and most importantly expectations. When capability gaps are identified, resources should be sought out or pre-identified at the regional or federal levels. Military commanders should be required to identify and posture IRA response teams of various size and capabilities (medical/fire/search and recovery/etc.), based on AOR requirements, to help facilitate timely disaster responses.

b. Interagency coordination: The DoD and DHS must work together improve the federal government’s oversight on IRA planning and preparedness. Contingency plans for specific domestic incident scenarios should be continually coordinated, developed, tested, and revised. Various courses of action to domestic disasters, to include utilizing the IRA, should be evaluated based on levels of effectiveness and response timelines. For example, although local and state first responders may not be overwhelmed by a

²⁶² U.S. Senate, *Hurricane Katrina: A Nation Still Unprepared*, 2.

particular incident, a local DoD installation (based on its capabilities and/or proximity to the event) may in fact be the most effective response mechanism available to mitigate the incidents affects. These situations must be considered and evaluated at all levels of incident response planning. The DoD and DHS in collaboration with local and state agencies/authorities should also establish an open forum (utilizing the internet and formal conferences) to provide lessons learned and best practices in the area of IRA preparedness and planning.

USNORTHCOM should also consider adopting USPACCOM's Joint Task Force-Homeland Defense's concept of operations. This concept involves organizing all military facilities and infrastructure in Hawaii into "Base Clusters" to facilitate planning, prioritization, and coordination with civilian agencies.²⁶³

4. Improve IRA Training and Education

According to the National Strategy for Homeland Security, the DoD and the DHS will participate as appropriate in homeland security training that involves military and civilian emergency response personnel.²⁶⁴ Based on the IRA's potential capability to mitigate the affects of natural and/or man-made disasters, these departments must improve and increase the IRA training and education they provide to DoD and non-DoD entities. Recommended initiatives for each department are provided below.

Department of Defense: Just as the DoD currently mandates yearly refresher training covering the Laws of Armed Conflict, the DoD should develop and mandate all DoD personnel receive DSCA (to include IRA) orientation and training. The DoD should also oversee and centralize, as appropriate, the training provided to military on-scene commanders and first responders. The DoD should also develop a simple to read handbook for distribution throughout the DoD and to local/state civil authorities and first responders that provides clear insight into the IRA provision, it resources, and the various points of contact.

²⁶³ Concept overview available at <http://www.usarpac.army.mil/docs/jtf-hd/jtf-hd.htm>, accessed 20 September 2006.

²⁶⁴ The White House, *National Strategy for Homeland Security*, 45.

Department of Homeland Security: As proposed in the National Strategy for Homeland Security, the DHS should include the IRA in their efforts to build a national training and evaluation system.²⁶⁵ This should include expanding the training and assessments for DSCA (including IRA) it provides to local, state, and federal agencies and first responders.

5. Review the DoD's Emergency Preparedness Liaison Officer (EPLO) Program

The DoD should also conduct a thorough review of the EPLO program. The DoD should oversee and evaluate the individual role and effectiveness of current liaison positions (which currently total over 300 senior officers and staff) and should consider realigning any identified redundancies. Along with standardizing EPLO training and guidance, the DoD should consider consolidating EPLO service positions into joint billets. While this effort may decrease the overall number of EPLO officers assigned to FEMA and other agencies, the consolidated oversight and expertise may eventually improve IRA and DSCA preparedness and response. Additionally, the manpower savings could enable more EPLO billets/positions be established at USNORTHCOM and USPACOM to improve operational DSCA and IRA planning, guidance, and oversight.

B. RECOMMENDATIONS FOR FURTHER CONSIDERATION AND STUDY

The recommendations below were developed during the course of this research and should be considered and/or evaluated through further study.

- DoD and DHS should evaluate, clarify, and simplify the financial reimbursement policies related to DSCA (including IRA). Civil authorities and DoD officials must better understand the circumstances where DSCA and IRA actions will require reimbursement and when reimbursements will not be sought due Presidential disaster declaration/military training benefit/etc.
- The DoD should closely monitor each military services' transformation efforts and evaluate potential impact on homeland security, including DSCA and IRA missions.
- Future Base Realignment and Closure (BRAC) criteria should include the potential impact a base closure may have on IRA operations/effectiveness.

²⁶⁵ The White House, *National Strategy for Homeland Security*, 45

- The DoD should continue to evaluate/assign/establish specific military units for homeland security roles/missions (such as JTF-Civil Support), as needed.
- The DoD should continue to examine and clarify the various homeland security roles/missions that will be carried out by the Active, Reserve, and National Guard components.

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VI. CONCLUSION

The ongoing debate over the federal government's roles and missions in providing homeland security is important and must continue in order to improve the unity of effort from those entities entrusted to provide national security. However, we must never forget that disasters (both natural and man-made) can strike at any time, as it did on an idle, crystal-clear, Tuesday morning in New York City on September 11, 2001. We must work aggressively to ensure every local, state, and federal first responder (to include DoD personnel acting under the Immediate Response Authority) are prepared and ready to respond in unity and total-force.

Although the DoD is normally considered a resource of last resort to aid in civil crisis and disaster relief efforts, its immense operational capabilities often results in the U.S. military being the primary course of action. Many in the U.S. government agree that a closer evaluation of existing procedures for the DoD under the National Response Plan, paying particular attention to the DoD's role when first responders are wiped out or otherwise incapable of providing initial response, is necessary.²⁶⁶ Events such as 9/11 and Hurricane Katrina have resulted in increased political and public pressure to widen the military's role in homeland security missions. The Bush administration has introduced the prospect of expanding the military's role in internal missions including civil-support operations. A point illustrated during a post-Hurricane Katrina interview where President Bush contented that such events in the future may "require greater federal authority and a broader role for the armed forces."²⁶⁷

Creating a comprehensive national approach to respond effectively to domestic emergencies will require a cooperative and on-going effort between local, state, and federal agencies to maximize resources and capabilities through expanded deliberate and community-based planning for DSCA activities. Considerations on expanding and improving the military's role in civil-support missions (to include IRA) will also certainly require a review into the military's current funding, preparedness and training for these

²⁶⁶ House of Representatives, *A Failure of Initiative*, 15.

²⁶⁷ Skelton: *Rumsfeld Confirms DOD has no plans to Alter Posse Comitatus*, 1.

missions. While the DoD has a robust response mechanism and various resources to mitigate disasters of limited-scope, it is simply not always adequately organized and/or prepared to respond to catastrophic disasters and domestic emergencies. However, until greater civilian capabilities are developed, the DoD will continue to be relied upon to provide massive assistance in instances of catastrophic disasters.²⁶⁸

Improving the IRA provision will take many difficult steps. Making the provision fully effective will be even more difficult. The U.S. military and its government may need to shift current domestic disaster preparedness and response paradigms. For example, the U.S. government's current primary strategic objectives for homeland security (in order of priority) are to:²⁶⁹

- 1) Prevent terrorist attacks within the United States**
- 2) Reduce America's vulnerability to terrorism**
- 3) Minimize the damage and recover from attacks that do occur**

Why is the list prioritized in this way? Is not reducing America's vulnerabilities and improving the federal response mechanisms to disasters just as important, and just as critical, as preventing attacks? The lessons of 9/11 and Hurricane Katrina are that we as a nation, must not only increase our capabilities to prevent attacks and disasters, but also improve national preparedness to respond to disasters that occur despite our best preventative measures. Hurricanes and other disasters will happen again - it is just a matter of where and when. Putting increased attention and pressure to improve the DoD's Immediate Response Authority provision will certainly help efforts toward a more concerted and effective national homeland security strategy and approach.

In a perfect state of preparedness, the DoD's IRA provision would not always be utilized as the first course of action or the last; but it should always be an effective and efficient means for providing immediate military aid and assistance to Americans in times of crisis.

²⁶⁸ Bowman et al, *Hurricane Katrina: DOD Disaster Response*, 14.

²⁶⁹ The White House, *The National Strategy for Homeland Security*, vii.

A. SUMMARY OF FINDINGS

This research was intended to evaluate and determine the overall effectiveness of the DoD's current Immediate Response Authority (IRA) provision. Many problems that affect federal and military emergency preparedness are longstanding. There are also impediments to implementing the current IRA provision. A listing (with the applicable page number for further information) of these findings is provided below:

- The federal government has experience difficulty ensuring effective and timely federal responses to domestic emergencies and disasters (page 24)
- The federal government has experience difficulty ensuring effective intergovernmental coordination and operability (page 28)
- There is a lack of clearly established DoD roles and missions for homeland security and civil support operations (page 53)
- There is a lack of clarity regarding the mechanism for requesting military support under the DoD's IRA provision (page 54)
- The U.S. military's civil-support paradigm limits IRA effectiveness (page 68)
- There is a lack of effective IRA guidance (page 69)
- There is a lack of central IRA oversight (page 70)
- DoD's current force structure and disaster preparedness limits IRA effectiveness (page 71)
- Ambiguity regarding IRA response authority limits IRA effectiveness (page 72)
- Lack of clearly established areas of responsibility (AOR) limits IRA effectiveness (page 73)
- There is a lack of consistent and effective IRA planning (page 74)
- There is a lack of effective IRA training and exercises (page 75)
- There is ambiguity regarding requests for IRA assistance (page 77)
- Local & state politics and emergency preparedness may limit IRA effectiveness (page 77)

B. SUMMARY OF RECOMMENDATIONS

A listing (with the applicable page number for further information) of the proposed recommendations identified in the research is provided below:

1. Recommendations for the U.S. Government

- The U.S. government should conduct a legal review of DSCA and IRA activities (page 80)
- The U.S. government should consider amending Future Base Realignment and Closure (BRAC) criteria to include the potential impact a base closure may have on IRA operations/effectiveness (page 86)

2. Recommendations for the Department of Homeland Security

- The DHS should revise the NRP to help clarify the IRA provision (page 81)
- The DHS should clarify that local and state authorities (in addition to the state governor) may request IRA assistance (page 81)
- The DHS should consider adding IRA as an implementation mechanism for providing proactive federal responses to catastrophic events within the NRP (page 82)
- The DHS should work with DoD to establish procedures to oversee and monitor IRA preparedness and response (page 82)
- The FEMA should become familiar with the IRA provision and update applicable guidance to help raise awareness among civil authorities (page 82)
- The DHS should consider revising the homeland security grant program to mandate and improve IRA planning/cooperation (page 82)
- The DHS should work with DoD to evaluate, clarify, and simplify financial reimbursement policies related to DSCA, including IRA (page 86)

3. Recommendations for the Department of Defense

- The DoD should update, improve, and clarify IRA guidance (pages 80-84)
- The DoD should consolidate IRA guidance into a single directive and develop an IRA handbook for DoD and civil authorities (page 80 and 84)
- The DoD should update the Strategy for Homeland Defense and Civil Support to include information and guidance regarding the IRA provision (page 83)
- The DoD should work with DHS to establish procedures to oversee and monitor IRA preparedness and response (page 82)
- The DoD should work with DHS to develop an open forum (utilizing the internet and formal conferences) to provide lessons learned and best practices in the area of IRA preparedness and planning (page 85)

- USNORTHCOM should assume the lead role for IRA preparedness and guidance within its AOR (page 80)
- USNORTHCOM should consider adopting and implementing Joint Task Force-Homeland Defense's (USPACOM) concept of operations to facilitate 'cluster' planning within AORs (page 85)
- The DoD should clarify IRA training and exercise requirements and mandate military commanders posture various teams for IRA activities (page 84-85)
- The DoD should develop and mandate DSCA and IRA training for all military personnel (page 85)
- The DoD should conduct a thorough review of its Emergency Preparedness Liaison Officer (EPLO) Program (page 86)
- The DoD should work with DHS to evaluate, clarify, and simplify financial reimbursement policies related to DSCA, including IRA (page 86)
- The DoD should closely monitor service transformation and evaluate the impact on civil support operations (page 86)
- The DoD should continue to evaluate/assign/establish specific military units for domestic operations, as needed (page 87)
- The DoD should continue to examine and clarify DSCA roles and missions of the different military components (page 87)

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